THE COVNTREY IVSTICE,

Containing the Practice of the Iuſtices of the Peace out of their Seſſions:

Gathered for the better helpe of ſuch Iuſtices of Peace as have not been much converſant in the ſtudie of the Lawes of this REALME:

Now the ſixth time publiſhed, reviſed, in many things corrected, and much inlarged:

By Michael Dalton *of Lincolnes Inne*, Eſquire, and one of the Maſters of the Chancerie.

Iuſtice is the ſtaffe of Peace, and the maintenance of Honour. CIC.

LONDON,
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1635.

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THE COUNTRY JUSTICE

Containing the Practice of

Mary Bracklett

TO THE RIGHT HONORABLE, SIR *Henrie Mountague*, Knight, LORD Chiefe Iuſtice of the Pleas, holden before the KINGS *Majeſtie*.

My Honourable good Lord,

After I had ſpent many yeeres in the ſtudie of the Lawes of this Realme, and was called to the miniſtration of *Juſtice* in my Country, I thought it not ſufficient to apply my ſelfe only to the precepts and directions of former times; but withall, to obſerve ſuch new accidents, as daily happened within mine experience, thereby the better to performe the duties of my place: Whileſt I thus endeavoured my ſelfe, I obſerved that *Iuſtices* of Peace in their places, grew in neglect, and many times were ouerſwayed by ſuperiour ſolicitations, yea, and ſometimes diſgraced, in ſuch ſort, as I could haue beene content rather to have ſit downe in private quiet, than with care, ſtudy, and paines to incurre ſuch hazards and diſcontentments. But a-

gaine, whileſt I ſtood thus doubtfull, it pleaſed the Fountaine of Iuſtice, (I meane his (*Royall Majeſtie*) to ſo countenance and grace, yea, to ſhew his Majeſties high eſteeme of the authority of *Iuſtices* of Peace, not onely (in his Majeſties late Speech in the *Star-Chamber*) prizing and valuing them with the deereſt imployed about him, But (to the great honour of this Realme, and of the government thereof) influence alſo eſtabliſhing this countrey government by Iuſtices of Peace, in his Majeſties native Countrey of Scotland: ſo as me thought, I ſaw the current of Iuſtice to run cleare and comfortably thorow the Land, and my ſelfe to receive new vigour and encouragement; whereupon I began to recollect my confuſed Notes and Obſervations, willing for my private helpe and better readineſſe, to digeſt them into ſome order and method, ſuch as my underſtanding could beſt contrive. Thus prepared, I yet made queſtion with my ſelfe, whether it were better to adventure the publiſhing of theſe my labours, or to keepe them by me onely for my owne private uſe. In this unſetled conſultation, being brought unto your Lordſh. by my good friend, (who alſo diſcovered to your Lordſh. this my labour) and finding your Lordſh. favourably to reſpect me, and it, I tooke heart and incouragement to put the ſame in Print, after that I had obtained (according to my humble ſuit) your Lordſh. favour for allowance and patronage thereof.

Now it remaineth further to crave of your Lordſhip not onely for my ſelfe, but for all that ſhall uprightly labour in this Iuſticiary courſe, that we may receive from your Lordſhip ſuch incouragement & countenance, as that we may couragiouſly and conſtantly undergoe the charge impoſed upon us, without feare of oppoſitions, or other uncomfortable diſturbances. So by your Lordſh. favour and meanes, ſhall Iuſtice bee the more duely adminiſtred, and his Majeſties peace be the more firmely maintained; to the honour and ſafety of the Kings Majeſtie, and the good and peaceable government of all his Subjects. And ſo his Majeſtie will no doubt proceed (as he hath begun) yet ſtill to increaſe your Honour, for your care in honouring him, and his Royall Throne thereby. And the people, who ſhall

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feele the goodneſſe and benefit of your zeale of juſtice, will heartily and joyfully pray for your happineſſe; And God, beholding how you make juſtice and peace to goe together, will according to his abundant Mercies, and unfallible Truth, give you the everlaſting reward of juſtice and peace: For all which I will continually pray, and beſides, reſt

Your Lordſhips in all humilitie,

and dutie, ever to be commanded,

MICHAEL DALTON.

feele the goodnesse and benefit of your zeale of iustice, will heartily and ioyfully pray for your happinesse; And God, beholding how you make iustice and peace to goe together, will according to his abundant Mercies, and infallible Truth, give you the everlasting reward of iustice and peace: For all which I will continually pray, and beides, rest

Your Lordship's in all humilitie,

and duetie, ever to be commanded.

MICHAEL DALTON.

TO THE RIGHT WOR-

shipfull Sir IAMES LEE, Knight, the Kings *Maiesties Atturney of his Court of* Wards *and Liveries*, and to the Right worshipfull, and my very good Uncle, THOMAS SPENCER, Esquire, and to the residue of my Masters of *Lincolnes Inne.*



I may peraduenture seeme strange, that after so many learned Writers in this kinde, I (a man of so weake parts) should presume to offer to the view of the world, a worke of this nature: Yet my reasons being considered with indifferent fauour, I hope to be excused not onely with you, but with all others that be louers of their Country, and seeke the peace thereof. I confesse my selfe a long, yet an unprofitable member of your honourable Society; but seeing that my calling is to a country life, and considering that he which is of the meanest condition, and that hath the smallest talent, may not, (without iust reprehension) restraine himselfe so to his priuate pleasure, or profit, as that he should neglect to shew some fruit and token of his loue to his Country (lest therein the Heathen Philosopher might iustly condemne him, who said, Non solum nobis nati sumus, sed partem patriæ, &c.) *I haue beene the bolder, according to my place, small power and capacitie, to offer this my small mite into the Treasurie of my Country; This worke (whatsoeuer it be) being written first as priuate notes for my*

my particular helps in this buſineſſe, wherewith my ſelfe and many others are daily imployed, and ſet on worke, without yeelding any pleaſure or profit at all to us, otherwiſe then for the publike good.

The ſweet of like labours, you my great Maſters (which I doe moſt gladly behold) do from time to time reap more fully, riſing daily to great honour and wealth, through your Wiſdomes, Deſerts, and great paines; That which remaineth to us Country Iuſticers (for the moſt part) is the wearying of our ſelues, the ſpending of our time, wits, and eſtates, Vt alii inde pace fruantur, and requited many times not only with much euill will, from or by the meanes of ſuch as wee haue in iuſtice to deale withall, but oftentimes alſo rather diſgraced then countenanced or incouraged by ſome in higher place.

I ſpeake not this without acknowledging it to be both iuſt and meet, that the actions and proceedings of the Iuſtices of Peace ſhould be well and duly looked into, and themſelues worthy to bee puniſhed, when through malice, or other corruption, they ſhall doe uniuſtly: But if through unwilling ignorance they happen to erre and do amiſſe, they are rather to be better informed, than ill intreated: Nemo naſcitur ſapiens, & humanum eſt errare.

I am bold to write unto you, my worthy Maſters, and worſhipfull Friends, and the reſt of this honorable Fellowſhip, knowing that there be many amongſt you, daily riſing to great places, whoſe honour it will be to maintaine the life of the Law, and iuſtice of the Realme, with the excellencie thereof, in cauſing due execution thereof to be had and done; redreſſing the abuſes and defects thereof, and incouraging ſuch as ſhall carry themſelues iuſtè, fideliter, & ſincerè: Againe, that there be many among you, of great learning and iudgment, by whom this my unperfect Worke may, yea, and I hope ſhall be more poliſhed and perfected. And ſeeing ſome others amongſt you, whoſe Fortunes proue (as mine doth) to withdraw themſelues into their Countries, I would gladly incourage them to imploy their better talents to the common good.

I aknowledge there be diuers other Bookes in this kind, more learned and methodicall; but withall I obſerue the buſineſſe of the Iuſtices of Peace, to conſiſt partly in things to be done by them out of their Seſſions, (and ſometimes priuately, and peraduenture upon the ſudden, without the aduice or aſſociation of any other) and partly at their Seſſions of the Peace: Of things of this laſt kind, I purpoſe not in this Treatiſe to meddle, for that at ſuch publike meetings and aſſemblies they are far more

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able to direct themselves, but for the private and sudden helpe of such Iustices of Peace, who peradventure have not read over the former Writers, and if they have, yet the multiplicity of Statutes (whereupon the office and private practice of Iustices of peace doth principally consist) being such, and at every Parliament so altered by expiration, discontinuance, and otherwise, as that it is a work very hard and laborious, for Gentlemen not conversant in the study of the Lawes (although otherwise very industrious) to proceed as by the Commission they ought and are prescribed, scil. Secundum Leges, & Statuta Regni: *upon which considerations, and for their ease principally, I have published this work, knowing that there be divers both honourable and worthy persons in the Country, of whom some for want of knowledge of the many & particular Statutes in force, and tedionsnesse of the studie of them, do seek to be exempt out of the* Commission *of the* Peace; *others being in, do forbeare to meddle, or medling, do not that good service therein which they are desirous to doe. I have therein endeavoured to set downe things so plainely, and briefly as I could, with reference to the statutes abridged, whereby the Reader may the better resolve, and satisfie himself what he ought to doe in every particular almost, that shall come before him, or them, out of their generall Sessions of the peace. And yet for that in cases of ambiguitie,* Satius est fontes petere quam sectari rivulos, *I could wish all Iustices of the peace to have ready by them the Statutes at large, as well as the Abridgements; and to use this Booke, or the Abridgements of the Statutes, as Tables, and briefe Memorials, but to trust and ground themselves chiefly upon the booke at large.*

Ed. 15. 17.

It resteth now only to intreate your favours; and although I must rest confident by the honourable Patronage *I have obtained of him, whose high place, and Presidencie for matters of Iustice, and iudicious understanding, drew me to covet the same, (& not a little besides induced, yea obliged thereto in regard of the neere allianee by Mariage into the Honourable house of the* Spencers:) *Yet withall I could not out of that duty and love which I owe to this Honourable Society, (my first breeder in the Studies of the Law) and hope of your tender respect, to uphold the credit of an affectionate member of your Society, but be bold thus to crave your further countenance in these my labours; and that you would be pleased to accept this loving remembrance as a thankfull acknowledgement to you, to whom I must ever acknowledge my selfe deepely obliged, and ever to rest at all your commands,*

MICHAEL DALTON.



For the better uſe of this Booke, and finding out of the Authors herein alledged, you muſt obſerve theſe ſhort directions hereunder following.

F.or Fitz. Fitzherbert. *Hee was ſometimes one of the Iudges of the Common Plees.*

Br. Brooke, *ſometimes Lord chiefe Iuſtice of the Common Plees.*

Dyer, *late alſo Lord chiefe Iuſtice of the Court of Common Plees.*

Co. *Sir* Edw. Coke, *Knight, late Lord chiefe Iuſtice of the Kings Bench, &c. his bookes of Reports.*

Co. L. 1. *Sir* Edw. Cokes *firſt part of* Inſtitutes *&c. upon* Littleton.

Fi. M. Henry Finch, Apprentice del Ley.

Plow. *Maſter* Plowdens *Commentaries.*

Raſt. Raſtals *Abridgement of the Statutes, imprinted* Ann. Dom. 1583. *He was ſometimes one of the Iudges of the Common Plees.*

Lib. Intr. *The Booke of Entries, Impreſſ.* 1596.

Lbt. *or* Lambt. *Maſter* Lamberds *Iuſtices of Peace, imprinted* 1599.

Cromp. *Maſter* Cromptons *Iuſtice of Peace, imprinted* 1606.

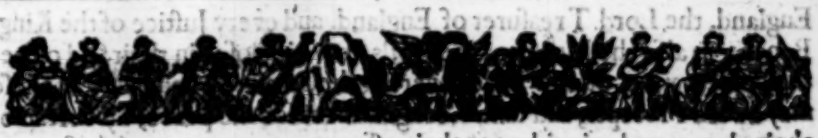
Maſters Poultons *Abridgement of the Stat. imprinted* 1608.

P. *Maſter* Poulton de Pace Regis.

Ba. *Sir* Fr. Bacon, *The Elements of the Common Law.*

Ba. V. *Vſe of the Law.*

Of



Of the Common Law; and of such as had, and still have, the conservation of the Peace, by the Common Law. Cap. I.



THe Common Lawes of this Realme of England, receiving principally their grounds from the Lawes of [a] God and Nature, (which Law of Nature as it pertaineth to man, is also called the Law of [b] Reason) and being for their Antiquitie, those whereby this Realme was governed many hundred yeares before the Conquest; the equity and excellencie whereof is such, as that there is no humane Law within the circuit of the whole world, by infinite degrees, so apt and profitable, for the honorable, peaceable, and prosperous government of this Kingdome, and so necessary for all estates, and for all causes, concerning Life, Lands, or Goods, as these Lawes be: These Lawes (I say) even from their beginning, have continued a speciall care for the conservation of the peace of this Land. And to that purpose, at the Common Law (long before Justices of the Peace were made) there were sundry persons to whose charge the maintenance of this Peace was recommended, and who with their other offices had (and yet still have) the conservation of the peace annexed to their charges, as a thing incident to, and inseparable from their said offices. And yet nevertheless they were and are called by the names of their Offices only, the conservation of the peace being included therein.

a The Law of God is the Law of the Land 34.H.6.40. Prisot. Doct & St. lib.1. cap.6. Co.3.40. Fi.1.

b Common Law, is common Reason. Vide Plo.3 a.67 a.107. b.& 465.a. Co.3.8 & 9. Parts. Preface. For-tescue ca.17 Lit.209.

First, the Kings Majestie (by his dignity royall) is the principall conservator of the peace within his Dominions, (and is *Capitalis Iusticiarius Anglie*) in whose hands alone at the beginning, the Administration of all Justice, and all Jurisdiction in all causes first was; and afterwards by and from him onely was this authority derived and given to others.

20.H.7.7.a. Co.12.85.

And yet so, as that whatsoever power is by him committed over unto other men, the same nevertheless remaineth still in himselfe; insomuch that he may himselfe in person sit in judgement, as in ancient times other Kings here have done, and may take knowledge of all cases and causes, unlesse they concerne himselfe, for in such cases wherein the King is a party, the King cannot properly sit in judgement, but must performe that by his Justices, Commissioners, or the like, as in cases of treason, felonies, or such others. The King also as he is the principal conservator of the Peace himselfe, so he may command all others to keepe the peace, and may award Processe against them to conserve the peace: But he cannot take recognizance for the peace, because the recognizance is made to himselfe, &c.

The Lord Chancellor (or Lord Keeper of the great seale) the Lord high Steward of England, the Lord Marshall, and high Constable of

Lamb.12.

England, the Lord Treaſurer of England, and every Juſtice of the Kings Bench, as alſo the Maſter of the Rolls, have incloſed in their ſaid offices the conſervation of the peace over all the Realme, and every of theſe may award Precepts, and take Recognizances for the peace, by vertue of their places, and as incident to their offices; yea every one of theſe upon prayer of ſurety of the peace made to them, or any of them againſt another, hath authority to award or grant their precept or warrant to the Sheriffe, Conſtables, or other the Kings Officers for the arreſting of the party, &c. and when he is come before them may take recognizance of him for the peace. And if the party ſhall refuſe to find ſuch ſurety, they may commit him to priſon. And yet for the Maſter of the Rolls, it is held that he maketh Proceſſe and taketh recognizance, not as incident to his Office (as all the other may) but the Maſter of the Rolls his authority herein is ſaid to be onely by preſcription, that he hath uſed to make ſuch Proceſſe, &c.

But at this day the conſervators of the peace are held to be out of uſe; and that their authority for the keeping of the peace, is now onely by vertue of the Kings Commiſſion of the peace, ordaining them to be Juſtices of Peace. Sir *Fr. Bacon* his uſe of the Law. *pag.* 12.

There be others who (by vertue of their offices) have the conſervation of the peace, but yet onely within the precinct of their ſeverall Courts, as namely, the Juſtices of the Court of Common Plees, the Barons of the Exchequer, and the Juſtices of Aſſiſe. And any perſon may pray and crave the ſurety of the peace before any of theſe in their Courts, and if the party be preſent, or within the place or precinct of their Court, or within their view, they may ſend the Warden of the Fleet, or other officers attending their Court, to bring the party before them, and they may take ſurety of him, and if hee ſhall refuſe to finde ſuch ſurety, they may commit him to priſon. Lamb. 1. 3. 2. H. 7. 1. Br. Peace. 28

Alſo the Juſtices of Aſſiſe, if the peace happen to be broken in their preſence, they may command the offender to the Gaole or priſon. And if complaint be made to them that A. is minded to breake the peace, or elſe if they doe perceive the ſame in their preſence, they may command the parties upon a certaine paine to keepe the peace, and that weapons be taken from the Jurors, or witneſſes, that appeare before him. But as they be meerely Juſtices of Aſſiſe they may not award any proceſſe or warrant for the peace, neither may they take ſureties of the peace, *Lamb.* 13.

Alſo the Steward of the Sheriffs Turne, the Steward of a Leet, and the Steward of a Court of Pypowders every of theſe are conſervators of the peace within their ſeverall Courts; For every of them may commit him to ward that ſhall make an Affray in their preſence, whileſt they bee in execution of their offices; for that theſe be Courts of Record: and ſo in all other Courts of Record. But none of theſe may grant any warrant for the peace. Lamb. 14. Br. Leet. 36.

And the Steward of the Sheriffes Turne, as alſo the Steward of a Leet (during their Courts) may by Recognizance, binde him to the peace that ſhall make an Affray in their preſence, ſitting the Court: And may commit him to ward until he hath found ſurety for the peace: And may also Cromp. 7. Br. Leet. 39. F. N. B. 82. 13. H. 4. 12.

alſo take the examination of felons, and commit them to the Gaole, and
31.Ed.4.21. may alſo take the preſentment of any felony at the Common Law, committed within their precinct; Or of any other offence againſt the peace, except the death of a man. See *Br. Leet.* 1.2.14.18.22.26.

Co.1.38. And ſo, if any other contempt or diſturbance to the Court ſhall bee committed in any (of the ſaid Courts, or in any other) Court of Record, the Iudge (or Steward) there, may impoſe upon ſuch offenders a reaſonable fine. See *Br Leet.* 14.36.

F.N.B.81.d. & 82. Br. Peace 13 The Sheriffe by the Common Law, is a principall conſervator of the peace in every place within his County. And (upon requeſt to him made) he may command another to finde ſurety of the peace, and may take the ſame ſurety by Recognizance, and that *ex officio*, and without any writ of *Supplicavit* to him directed: and this ſeemes to be by vertue of his Commiſſion, which ſaith, *Commiſimus vobis cuſtodiam Comitatus, &c. vide Br. Iudges* 11. *& Recogn.* 5.14.16. *&* 18.

Stamf. 48. Coroners alſo (by the Common Law) are conſervators of the peace, within the County where they be Coroners: but they (as alſo all other the conſervators of the peace by the Common Law) have power for the keeping of the peace, onely as the Conſtables have at this day: *vide hic infra, & tit.* Forcible Entry. *& Cromp.6.*

The high Conſtables of hundreds, are conſervators of the peace within their ſeverall hundreds and limits by the Common Law. *Cromp. 6. & 222. 12.H.7.fol.18.*

And therefore theſe high Conſtables, at their pety Seſſions, for any affray made in diſturbance of their Court, may impriſon the offenders. *Co.*11.43.44.

Br. Peace 13. Fl. 127. Every pety Conſtable within the limits of their ſeverall Townes, be conſervators of the peace (at the Common Law) by vertue of their office: *Vide tit.* Affray and Forcible Entry.

And theſe pety Conſtables may do what they can to keepe the peace; But they cannot take ſurety of the peace, at the requeſt of any man. *Vide Cromp.6. & 222. & 12.H.7.fol.18.a. & hic poſtea.*

There be other Officers of much like authority to our Conſtables: As the Borſholders in Kent, the Thirdborow in Warwikſhire, and the Tythingman and Burrowhead or Headborow, or Chiefe pledge in other places. But yet the office of a Conſtable is diſtinct, and (as it ſeemeth) is of more and greater authority and reſpect than theſe other, as you may
Lbt. 51. 52. 53. 54. & 55. ſee by maſter *Lambert* of the duty of Conſtables. *pag.* 51. *&c.* where he ſeemeth to hold that theſe Borſholders, Thirdboroughs, Tythingmen, Headboroughs, and other ſuch, being in any Towne or Pariſh whereas a Conſtable is, thoſe other cannot meddle, becauſe Conſtables be (in compariſon of them) head Officers. And that the Tythingmen, &c. are but as aſſiſtants to the Conſtable in all ſervices of his office when the Conſtable is preſent, and in his abſence, then theſe other to attend the ſervice: And that there are many other things which the Conſtables may doe, and wherewith the Borſholders and the reſt cannot meddle at all. And yet in Townes where there be no Conſtables, and that the Borſholders, Thirdboroughs, Tythingmen, Headboroughs, or ſuch other be, there the onely

Officers for the peace; as alſo in ſuch caſes where the power or authority of the Borſholder, &c. is declared to be equall with the power of the Conſtable: in all ſuch caſes and things, their office and authority be in a manner all one. See the Statute 1. *Iac. cap. 7. & Lambt office d'l Conſt. 46. 9.*

Therebe alſo divers Statutes which doe appoint offenders to be puniſhed by the Conſtable, or other inferiour Officers. See *hic cap.* 37. Now who be theſe inferiour Officers if not the Tythingmen, &c.

And now for that theſe petty Conſtables be much abſent from their houſes or homes, partly by reaſon of their imployments in their office, and partly by reaſon of their owne private occaſions, (eſpecially in our, and other like parts of the Land; where theſe Officers are for the moſt part husbandmen, and ſo moſt part of the day in the fields) it would prove very ſerviceable, if by a Law to be made in Parliament, every Towne and Village were to have a Tythingman, or ſuch other Officer, (or the like) to attend this ſervice of the Conſtable, in his abſence at the leaſt, for that for want of ſuch aſſiſtance, Rogues, Vagabonds, and the like, knowing their times, now travell up and downe farre more boldly.

And yet Maſter *Crompton fol.* 222. ſaith, that a Conſtable may make a Deputy to execute his Office in his abſence, for that he may be ſicke, &c. *quære* in what manner.

If any man ſhall make an affray or aſſault upon another in the preſence of the Conſtable or Borſholder, or if any man in the preſence of the Conſtable ſhall threaten to kill, beat, or hurt another, or ſhall be in a fury readie to breake the peace, in every of theſe caſes, the Conſtable or Borſholder may commit the offenders (to the Stocks, or to ſome other ſafe cuſtody for the preſent, (as his or their quality requireth,) and after may carry them before ſome Juſtice of peace, or to the Gaole) untill they ſhall finde ſurety for the peace; which ſurety the Conſtable himſelfe may alſo take by obligation, to be ſealed and delivered to the Kings uſe; and if the party will not finde ſuch ſurety to the Conſtable, hee may impriſon the party untill he ſhall doe it. 3. H. 4. 9, 10. 3. H. 4. 9, 10; Fi. 137. Hic. cap. 8.

I have ſeene the report of *Sharrets* caſe *termino Trin. Anno* 35. *Eliza. Rotul.* 1458. where *Sharret* brought his action of falſe impriſonment againſt one *Hammer*, for arreſting the plaintiffe, and impriſoning him, &c. The defendant to the impriſonment pleaded that he was high Conſtable of the hundred of E. in the County of S. and that the plaintiffe made an Affray within the ſaid hundred upon one H. W. who preſently came to him, and told him thereof, and ſwore upon a booke that he was in feare of his life by the other: Whereupon the defendant came to the plaintiffe and arreſted and impriſoned him, untill he had found ſufficient ſureties for the peace: upon which the plaintiffe demurred. And it was adjudged that the plea of the defendant was inſufficient, firſt, for that hee was not preſent at the aſſault and Affray; ſecondly, for that hee was the high Conſtable of the hundred, and not Conſtable of the Towne. In the argument of which caſe, *Anderſon* held Conſtables to be conſervators of the peace at the Common Law, and ſtill ſo to be, and that they ought to preſerve the peace as much as in them lyeth, but that (ſaid hee) was by parting of men which he ſhould ſee breaking of the peace, and to carry

them before a Juſtice of peace, to finde ſureties for the keeping thereof: but to take ſureties himſelfe, the Conſtable cannot. And thoſe which hold that he may take ſurety, cannot tell what ſurety that ſhould be, for he cannot take a recognizance, nor bayle, for he is no Officer of Record; and if he ſhall take an obligation, how the ſame ſhall be certified, and into what Court, he ſaid he knew not, and that it ſhould be very inconvenient to give ſuch authority to every Conſtable. But by *Walweſire*, *Owen*, and *Beamond*, although a Conſtable cannot take ſurety for the peace by recognizance nor bayle, yet he may take an obligation according to the booke 10.*E.*4. And if the Affray be in their preſence, they are conſervators of the peace, and therefore may uſe ſuch meanes for the keeping of the peace by taking ſurety by obligation. And that before Juſtices of Peace were, the peace was preſerved, and that by the Conſtables. And that the Statute which ordained Juſtices of peace did not take away the authority of the Conſtable; But the Conſtable hath no authority to take an oath of the party that hee is in feare, &c. Whereunto *Anderſon* chiefe Juſtice replyed, ſaying, I doubt not but that at the Common Law the peace was kept, but that was to be done in ſuch manner as the Law appointed, and that is by writ out of the Chancery or Kings Bench.

Bacon. v. 5. Sir *Fr. Bacon* Lord *Verulam* in his booke intituled the Uſe of the Law, writeth to this effect, By the Common Law, the Conſtables office was to arreſt the parties that had broken the peace; or were (in a fury) ready to breake the peace: *ſc.* if either hee had ſeene it himſelfe; or were truely informed thereof by others; or upon the confeſſion of the party, who had freſhly broken the peace; And that all ſuch offenders the Conſtable might impriſon in the Stocks, or in his owne houſe, as the quality required, untill they had beene bound by obligation, with ſureties to the King to keepe the peace from henceforth: which obligation was to be ſealed and delivered to the Conſtable to the uſe of the King; And the Conſtable was to ſend it into the Exchequer, or Chancerie, from whence Proceſſe ſhould be awarded to levie the debt, if the peace bee broken. *quod Nota. Vide etiam Finch. fol.* 127. agreeing herewith, for ſuch as the Conſtable findeth breaking the peace.

Every of theſe Conſervators of the Peace are (by the ancient Common Law) to imploy their owne valour, and may alſo command the meet help, ayd, and force of others, to arreſt and pacifie all ſuch who in their preſence, and within their juriſdiction and limits, by word or deed, ſhall goe about to breake the Peace.

Alſo every of theſe Conſervators of the Peace, if they have committed, or bound over any ſuch offenders, it ſeemeth they are then to ſend to, or to be preſent at, and attend the next Seſſions of the Peace, or Gaole delivery, there to object againſt ſuch offenders.

But for the high Conſtables, and pety Conſtables, although they have (by the Common Law) the charge of the Peace as incident to their office, yet it ſeemeth to ſome, that their offices and authority began not long before the time that Juſtices of peace were ordained, (See here *titulo* Conſtable.) Whereas the Sheriffs, Coroners, Stewards of the Sheriffs Turne, of the Leet, and of the Court of Pypowders, and the Juſtices of

all higher Courts, were long time before the conqueſt. See *Co. 9. Part*, the Preface.

There were ſundry other perſons, who (by the ancient Common Law) had the ordinary keeping of the peace, and were named *Cuſtodes pacis*, whereof ſome were by election (in full county,) and ſome by Tenure, as you may ſee in M. *Lambert* 16, 17. There were others which were called to this Office by the Kings Writ, to continue for the terme of their lives, or at the Kings pleaſure, but theſe are now all ceaſed.

The firſt ordaining of Iuſtices of the Peace. CAP. 2.

KIng *Edward* the firſt (according to the firſt Article of the ſacred Oath received by him, and ſince by other Kings and Queens of this Realme at their ſeverall Coronations, the which is in theſe words, *Servabis Eccleſiæ Dei, Clero, & Populo, pacem ex integro, & concordiam in Deo ſecundum vires tuas; Quibus Rex reſpondit, Servabo*) in his firſt Parliament holden *An.* 3. of his reigne *Cap.* 1. hath eſtabliſhed and commanded, that the peace of holy Church, and of the Land, ſhall be well kept and maintained in all points: The which peace of the Church is (and alwayes hath beene by the ancient Lawes of this land) protected and conſerved by the King, the Archbiſhops, and Biſhops of this Realme: And the Peace of the land is and alwayes hath beene defended and maintained by the ſame King, and their temporall Juſtices or Officers lawfully appointed for the ſame, &c. Which temporall Juſtices, at the firſt were the conſervators of the Peace, as aforeſaid. But more eſpecially in thoſe times there alſo were in every County continually Juſtices of Oyer and Determiner, and alſo there were Juſtices Itinerants, the which had power not onely to determine all manner of quarrels (as well reall, as perſonall) but alſo all offences againſt the peace, &c. as may appeare in our Law-bookes, and eſpecially in *M. Fitzh. tit. Corone* amongſt the *Iter' North' & Canc'*.

Their beginning. For although by Chronicle Law in our Annals, it is reported, that *William* the Conqueror ordained Juſtices of the peace, about *An. Do.* 1070. *An. quarto* of his reigne; yet Juſtices of peace had not their being almoſt three hundred yeares after, *viz.* untill *Anno. Do.* 1327. At which time Juſtices or Commiſſioners of the peace were firſt created and ordained by the Stat. 1. *Ed.* 3. *cap.* 16. By which Statute it was ordained, that in every Shire of the Realme certaine perſons ſhould be aſſigned (*ſc.* by the Kings Commiſſion) to keepe the peace: And their authority was after inlarged by the ſtatute of 4. *E. ca.* 2. 18. *Edw.* 3. *cap.* 2. and 34. *Ed.* 3. *cap.* 1. And by the ſaid ſtatute of 34. *Ed.* 3. 1. were they firſt (generally) inabled to heare and determine (at the Kings ſuit) all manner of felonies and treſpaſſes; And each County had now its proper Commiſſioners for the peace, whereas before, (it ſeemeth) the Commiſſions to the Juſtices of peace were not alwayes made ſeverally into each Shire, but ſome time ioyntly to ſundry perſons over ſundry Shires. Holliſh. 3.

Their name But the ſtatute of 36. *E.* 3. *cap.* 12. is the firſt ſtatute that nameth them Juſtices of the peace: For the ſtatutes of 2. *Ed.* 3. *cap.* 6. and 25. *Ed.* 3. *cap.*

cap. 6. 7. 8. ſpeaking of Juſtices, ſeeme not to be of our Juſtices of peace; but that of 2. *Ed.* 3. as alſo the ſtatute of Wincheſter *cap.* 6. therein mentioned, to be meant of Juſtices Itinerants, or Juſtices in Eyre: and the other of 25. *E.* 3. to be meant of Juſtices of Commiſſioners ſpecially aſſigned for Servants and Laborers. See for this laſt *Lamb.* 24. & 577, 578. and the ſtatutes of Laborers made 25. *E.* 3. *cap* 6, 7, 8. and of 42. *Ed.* 3. *cap.* 6. *Raſtal. fol.* 233. *a. b. d.*

They be called Juſtices (of the peace) becauſe they bee Judges of Record; and withall to put them in minde (by their name) that they are to doe juſtice (which is, to yeeld to every man his owne by even portions, and according to the Lawes, Cuſtomes, and Statutes of this Realme,) without reſpect of perſon.

They are named alſo Commiſſioners (of the peace) becauſe they have their authority by the Kings Commiſſion.

And here it ſhall not be amiſſe, ſhortly to put our Juſtices of peace in minde, how that Juſtice may be perverted many wayes, (if they ſhall not arme themſelves with the feare of God, the loue of Truth and Juſtice, and with the authority and knowledge of the Lawes and Statutes of this Realme.) As namely,

1 Firſt by Feare; when fearing the power or countenance of another, they doe not juſtice, *Deut.* 1. 17. Yee ſhall not feare the face of man, for the judgement is Gods, who is, *Capitalis Iuſticiarius totius Mundi*; Chiefe Juſtice of Heaven and Earth.

2 Favour, when they ſeeke to pleaſe their friend, neighbour, or others. *Deuter ibid.* Ye ſhall have no reſpect of perſon in judgement.

3 Hatred or malice, againſt the partie or ſome of his. See *Levit.* 19. 18.

Eccle. 22. 27. 4 Covetouſneſſe; when they receive or expect fee, gifts, or reward: for as the wiſe man ſaith, *Rewards and gifts doblinde the eyes of the wiſe, and make them dumbe that they cannot reprove faults.*

5 Perturbation of minde; as anger, or ſuch like paſſion: *Iames* 1. 20. The wrath of man doth not accompliſh the Righteouſneſſe of God.

6 Ignorance, or want of true underſtanding, what is to be done: *Ignorantia mater Erroris.*

7 Preſumption; when without Law (or other ſufficient rule or warrant) they (preſuming of their owne wits) proceed according to their owne wills and affections: There is more hope of a foole, than of him that is wiſe in his owne conceit, *Pro.* 26. 12.

8 Delay; which in effect is a denying of juſtice, *Negligentia ſemper habet comitem infortunium, & mora trahit periculum.*

9 Precipitation, or too much raſhneſſe; when they proceed haſtily without due examination and conſideration of the fact, and of all materiall circumſtances, or without hearing both parties; for as another ſaith (*Qui aliquid ſtatuerit parte inaudita altera, æquum licet ſtatuerit, haud æquum eſt*;) He that ſhal judge or determine of a matter, the one party being unheard, although he ſhall give juſt judgement, yet is he not a juſt Judge. And againe, *Omnia non properanti clara certaque fiunt, feſtinatio autem ſemper improvida ac cæca eſt*; All things are plaine and certaine to him that is

not

not raſh nor neadie; but haſte is alwayes improvident and blinde. See *Deutr.* 17.4. & *Eccleſiaſticus* 11.7.8.

His Maieſties Speech in the Star chamber, An. 1616.

All theſe King *Iames* his Majeſtie, of happy memory, hath ſhortly, yet fully obſerved in his charge lately given to the Judges, *ſc.* charging them, *That they doe juſtice uprightly and indifferently, without delay, partiality, feare, or bribery, with ſtout and upright hearts, with cleane and uncorrupt hands, and yet not to uttertheir owne conceits, but the true meaning of the Law, not making Lawes, but interpreting the Law, (and that according to the true ſenſe thereof, and after deliberate conſultation) remembring that their office is,* Ius dicere, *and not* Ius dare.

According to this laſt alſo is the rule given in the booke of Iudges *ſc. In all cauſes doubtfull, firſt to conſider of the matter, to conſult, and then to give ſentence.* Iudg. 19 39.

Yea, God himſelfe hath given us preſidents of ſuch deliberate proceedings, as you may ſee in *Geneſis ca.* 3. *verſ.* 8. *&c. & cap.* 18 *verſ* 21. Ge 3 8,9,11

Theſe are worthy directions for all Iuſtices of peace, that they carrie themſelves in their places uprightly and indifferently, not uttering their owne conceits, nor upon the ſudden to over-rule things, but after deliberate conſideration and conſultation, then to proceed to execute the authority committed to them.

Their deſcription or definition.

Iuſtices of peace are Iudges of Record, appointed by the King to bee Iuſtices within certaine limits, for the conſervation of the peace, and for the execution of divers things comprehended within their commiſſion, and within divers ſtatutes committed to their charge.

Now firſt that the Iuſtices of peace are Iudges of Record (yea, that every Iuſtice of peace by himſelfe is a Iudge of Record, and one upon whoſe ſole report and teſtimonie the Law repoſeth it ſelfe very much) appeareth more plainely, if you obſerve theſe things following: 9 E. 4. 3. 14 H. 8. 16.

1 He is made under the great ſeale of England, which is a matter of Record.

2 Every Iuſtice of peace hath judiciall power given unto him by the commiſſion, *ſc.* in the firſt *aſſignavimus.*

3 Alſo by ſome ſtatutes they have judiciall power given them; for they may make a Record of a force by them viewed, and may therupon fine and impriſon the offenders: yea, one Iuſtice of peace in ſome caſes, may alſo heare and determine offences, and puniſh an offender as convict upon his owne view, or upon the confeſſion of the offender, or upon examination and proofe of witneſſes: *vide tit. Forcible Entrie,* and *Heare and Determine. Vide hic cap.* 22 *&* 66.

4 His Warrant (though it be beyond his authority) is not diſputable by the Conſtable, or other inferiour Miniſter, but muſt be obeyed and executed by them: But this muſt be underſtood, when the Iuſtice of peace hath juriſdiction of the cauſe, for, or concerning which hee hath granted his Warrant; for otherwiſe the Conſtable or other Officer executing their Warrant, ſeemeth to be puniſhable, notwithſtanding the Iuſtices Warrant: *vide tit. Warrants. cap.* 117. Lamb. 60. 64. 14 H. 8. 18. Co. 10. 6.

5 He may take a Recognizance (for the peace. &c.) which is a matter of Record, and which none can do but a Iudge of Record, See *Br. Recog.* 8. & 14. Lamb. 67.

6 His

6 His Record (or teſtimonie) in ſome caſes, is of as great force as an indictment upon the oath of twelve men, and in ſome other caſes of greater force than an indictment. See hereof, *tit. Force, Highwayes, Peace, and Ryot.*

7 He alſo may make out proceſſe upon Enditements, or Information againſt offenders, &c. yea, and that out of their Seſſions, (in ſome caſes) as they may ſee hereafter. *tit. Proceſſ. cap.* 132.

Great cauſe therefore have the Juſtices of Peace to take heed that they abuſe not this their credit and authority, either to the oppreſſing of the ſubject by making untrue Records, or defrauding of the King by ſuppreſſing the true Record.

By the Statute of 12. *R.2. cap.*10. there ſhould bee but ſix Juſtices of peace (in every Commiſſion of the Peace) with the Juſtices of Aſſiſe. *The number.*

After, by the ſtatute 14. *R.2 cap.*11. it was ordained that there ſhould be eight Juſtices of Peace aſſigned, beſides the Lords.

And two Lawyers (at leaſt) ſhall be aſſigned in every County, to heare and determine felonies and treſpaſſes done againſt the Peace: 18 *E.* 3. *cap.* 2. 34 *E.*3. *cap.*1. & 17. *R.*2. *cap.*10.

Alſo Juſtices of peace ought to bee Reſiant and dwelling within the ſame County, (except Lords, and Judges, &c.) 2. *H.* 5. *cap.* 4 & 2. *H.* 5. *Stat.*2 *cap.*1.

Peace. CAP. 3.

Fitz. Iuſt. of P. 12. PEeace in effect (ſaith M. *Fitzh.*) is the amity, confidence, and quiet that is betweene men: And he that breaketh this amity or quiet, breaketh the Peace.

Yet Peace (in our Law) moſt commonly is taken for an abſtinence from actuall and injurious force, and offer of violence; and ſo is rather a reſtraining of hands, then an uniting of mindes. And for the maintenance of this Peace chiefly, were the Juſtices of peace firſt made.

The breach of this Peace ſeemeth to be any injurious force or violence moved againſt the perſon of another, his goods, lands, or other poſſeſſions, whether it be by threatnings words, or by furious geſture, or force of the body, or any other force uſed *in terrorem.*

The office of the Juſtices of peace is principally to be exerciſed to the ſuppreſſing of ſuch injurious and unlawfull force or violence, and yet (the commiſſion of the peace being *pro bono pacis, ac pro conſervatione ejuſdem, & pro quieto regimine & gubernatione populi*) I ſee not why the Juſtices of Peace ſhould bee reſtrained from preventing and repreſſing ſuch other offences, misbehaviours, and deceits, as may breake the amity, quiet, and good government of the people, and whereof diſcords, and ſo breaches of the peace doe often ariſe (though there appeare neither force nor violence in the offence it ſelfe: as libellings, coozenages and ſuch other offences, *vide tit. Good Behaviour.*

But it is no part of the office of the Juſtice of peace, to forbid lawfull ſuits; albeit they ſhall doe well to be mediatours of peace in ſuch ſuits and

and controverſies as ſhall ariſe amongſt their neighbours. Neither ſhall any man be puniſhed for ſuing any writ in the Kings Courts, *ſoit ceo de Droit, ou de tort. Ca. Li. 61.*

The conſervation of this peace (and therein the care of the Juſtice of Peace) conſiſteth in three things, *viz.*

1 In preventing the breach of the Peace, (wiſely foreſeeing and repreſſing the beginnings thereof) by taking ſurety for the keeping of it, or for the good behaviour of the offenders, as the caſe ſhall require.

2 In pacifying ſuch as are in breaking of the peace. See *poſtea tit. Affray.*

3 In puniſhing (according to Law) ſuch as have broken the peace.

But of the three, the firſt, the preventing Juſtice, is moſt worthy to be commended to the care of the Juſtices of peace.

Three ſorts Juſtices of Peace (at this day) are of three ſorts, and are appointed or created by three meanes:

1 Firſt, by act of Parliament; as the Biſhop of Ely and his ſucceſſors, and their temporall Stewards of the Iſle of Ely (for the time being) ſhall be Juſtices of the peace within the ſaid Iſle, and ſhall uſe and have within the ſaid Iſle, all ſuch power as doth belong to any Juſtice of Peace within any Country. 27. H. 8. 24. P. Inſt. 9

And ſo of the Archbiſhop of Yorke, and the Biſhop of Durham, and their ſucceſſors, and their temporall Chancellors, &c. *ibidem.*

By grant. 2 Secondly, by Grant made by the King by his Letters Patents, under the great Seale, (and by his Bill aſſigned) as Mayors, and chiefe Officers in divers corporate Townes: And ſuch the King cannot diſcharge againe at his pleaſure, but they ſhall continue and enjoy their juriſdiction, according as their Letters Patents doth enable them; and therefore if the King granteth to a Mayor, or other head Officer of a Citie, or Corporate Towne, and to their ſucceſſors, to be Juſtices of Peace in their Citie or Towne, and after maketh out a Commiſſion of the Peace to others there, yet the authority and juriſdiction of the Mayor, &c. remaineth good, for that it was granted to them and their ſucceſſors, and is not revocable at the Kings pleaſure, as a Commiſſion of the Peace is. Lamb. 26. Br. Commiſſ. 5.

And ſuch Juſtices of Peace by Grant or Patent, have thereby the ſame power that the conſervators of the Peace had by the common Law; and it ſeemeth, ſuch power alſo as is given to the Juſtices of Peace, (or to any one Juſtice of Peace) by expreſſe words in any ſtatute: But none of them have thereby the whole power which is ordinarily given to the commiſſioners of the Peace by their commiſſion: And ſo it ſeemeth of the firſt ſort of Juſtices of the peace by act of Parliament, *ſc.* of the Archbiſhop of Yorke, and the Biſhops of Durham, and Ely, and their temporall Chancellors, and Stewards.

Alſo concerning ſuch Juſtices of peace by Grant or Patent, if the Grant be made to ſuch as be not learned in the Law, yet if the Grant be *ad pacem conſervandum, &c.* or *ad inquirendum tantum*, this is a good Grant; But if their Grant be made *ad audiendum & terminandum* this is a void Grant (*ut dicitur*) unleſſe ſome one man learned in the Lawes of this Realme be alſo joyned with the other in the commiſſion, and then ſuch a Com-

a Commiſſion made *ad audiendum & terminandum* is good in Law. For in all caſes where the Commiſſion or Grant is *ad audiendum & terminandum*, it is meet that ſome, or one at the leaſt, ſhould be learned in the Lawes of this Realme. See the Statutes 18. *E.* 3. *cap.* 2. & 13. *R.* 2. *cap.* 7. & 17. *R.* 2. *cap.* 10.

18.H.6.c.11 3 The third ſort of Juſtices of Peace are by Commiſſion (made of common courſe,) under the greate Seale of England: and theſe are appointed by the diſcretion of the L. Chancellor. And yet the Juſtices of Peace within the County Palatine of Lancaſter, are to bee made by Commiſſion under the Seale of the ſame Dutchie, by the Statute 27. H. 8. *cap.* 24. *By Commiſſion.*

Raſtal. 134.d

But theſe Commiſſioners of the Peace, their authority doth determine by divers meanes; yet more uſually by three meanes.

1 Firſt, by the death of the King, or by his Reſignation of his Crowne: For by the Commiſſion he maketh them *Iuſticiarios noſtros*, ſo that he being once dead, or having given over his Crowne, they are no more his Juſtices; And the Juſtices of the next Prince they cannot be, unleſſe it ſhall pleaſe him afterwards ſo to make them; *Lamb.* 71. *Dyer.* 165.

2 Secondly, at the Kings pleaſure; and that in two ſorts.

5.E.4.32. Br. Cõmiſſ. 18. 22.Aſſ. 21. Br. Cõmiſſ. 13.d 1 Either by the Kings pleaſure expreſſed, (as the King in expreſſe words may diſcharge them by his Writ under the great Seale) or by *Superſedeas*: but the *Superſedas* doth but ſuſpend their authority, which may be revived by a *Procedendo*.

Br. Cõmiſſ. 20. 24. 2 Or by implication; (as by making other Commiſſioners of the ſame kinde, and within the ſame limits, leaving out the ancient Commiſſioners names) 10. *E.* 4. 7. & 3. *Mar.* 1.

Br. Cõmiſſ. 26. 38. But here the ancient Commiſſioners muſt have knowledge of ſuch new Commiſſion; for this determination of the old Commiſſion groweth not immediately by the making of the new Commiſſion; but either by giving ſpeciall notice of the new Commiſſion unto the old Commiſſioners; Or elſe by and after the reading (or proclaiming) of the new Commiſſion, at the Aſſiſes, Seſſions of the Peace, or at the full County; Or elſe by holding of ſome open Seſſions, by vertue of the new Commiſſion; (in which two laſt caſes, the old Commiſſioners muſt take notice of the new Commiſſion.) And in all theſe caſes, if the ancient Commiſſioners doe ſit by vertue of their ancient Commiſſion, and after ſuch notice or publiſhing of the new Commiſſion, all whatſoever ſuch ancient Commiſſioners ſhall ſo doe, is void: And contrariwiſe, untill ſuch notice or publiſhing of the new Commiſſion, whatſoever meane acts ſuch ancient Commiſſioners ſhall doe, by vertue of their ancient Commiſſion, is good in Law. See. 34. *Aſſ.* 8. *Br. Commiſſ.* 14.

11.H.6.cas. 12.E.4.ca.6. P. Diſcont. 6. Alſo in all caſes where an ancient Commiſſion of the peace is determined by a new, yet, no proceſſe of ſuit depending before, the old Commiſſioners ſhall be diſcontinued thereby, neither ſhall any other thing done by the Juſtices of the peace by force of their ancient Commiſſion, be made or become void thereby.

3 Thirdly, by the Acceſſion of another Office, as when a Juſtice of peace is choſen to be Sheriffe of the ſame County, his authority of a Juſtice

ſtice of Peace there is ſuſpended during his Sheriffewike; But after that another is choſen, and ſworne Sheriffe of the ſame County, then his authority as Iuſtice of Peace remaineth as it was before, without any renuing of the Commiſſion, and without any of the oathes newly to bee taken by him; except his name be then put out, or left out of the Commiſſion, as ſometimes hath beene uſed to be done, and perhaps onely to get new fees. 1. Ed 6.7. 1. M. 8. P. Diſcont. 4.

The reaſon why his authority of a Iuſtice of Peace is ſuſpended during his Sheriffewike, ſeemeth to be, for that the Sheriffe is a Miniſter, and a Iuſtice of Peace is a Iudge, and the one is as neceſſary as the other. And beſides, the Office of a Iudge being to command, and of a Miniſter to execute the commandement; if one man ſhall be both Iudge and Miniſter, thereof it would follow that the Sheriffe ought to command himſelfe, or that he ſhould as an Officer ſerve his owne precept, made as a Iuſtice or Iudge, the which cannot be.

Alſo if a Iuſtice of Peace be made a Coroner of the County, this by ſome opinions is a diſcharge of his authority of Iuſticeſhip of Peace: otherwiſe, ſay they, where he ſhall be made an Eſcheator, Vnderſheriffe, Bayliffe, or the like. *Lam. 72 quære.*

But if a Iuſtice of Peace be made a Knight, or Serjeant at Law, or hath any greater name of Office of honour or dignity given him, this taketh not away his authority of a Iuſtice of Peace. *Br. Commiſſ. 4. & 22.* See alſo the Statute of 1. *E. 6. cap. 7.* 1. E. 6. ca. 7. P. Diſcont. 4.

Note alſo, that although by the death of the King, or by his reſignation, the authority of all Iuſtices of Peace (yea and of all Iudges, Commiſſioners of *Oyre* and *Terminer*, Commiſſioners of Gaole delivery, Sheriffes, Eſcheators, and other Officers that are by commiſſion) doth ceaſe; yet Mayors, and chiefe Officers in Cities and corporate (Townes, which have the authority of Iuſtices of Peace, or of the conſervation of the Peace by Grant under the Kings Letters Patents to them and their ſucceſſors), their authority ſtill remaineth, notwithſtanding the Kings death, or reſignation. Br. { Coron. 12. 14. Off. 15. Dyer. 165. Co. 7. 30. Br. Com. 5.

So alſo the Office and authority of the high Conſtables and pety Conſtables, ſeemeth to remaine, notwithſtanding the death of the King, &c. for that their authority is by the Common Law, and to their ſaid Office the conſervation of the Peace remaineth as a thing incident, and unſeparable from the ſame.

Coroners alſo doe remaine conſervators of the Peace (within the County where they are Coroners) notwithſtanding the Kings death, &c. for they are made by the Kings Writ, and not by Commiſſion; and their Office and authority doth remaine untill they bee removed by the Kings Writ, and their Office remaining, the conſervation of the Peace remaineth as incident thereto. 4. E. 4. 44. Br. Office. 25. Dyer. 165.

CAP.

CAP. 4.

P. Iuſt. 4. 1. Eliz. 1.

EVery Iuſtice of Peace (before he ſhall take upon him to exerciſe the Office of a Iuſtice of Peace) ſhall take two corporall oathes; the one concerning the Office of a Iuſtice of Peace; the other concerning the Kings Supremacy. *Their oath.*

The Oath concerning this Office, ſeemeth to be by force of the Statute made 13. *R.* 2. *c.* 7. And yet ſee the Oath of the Iuſtices, made *Anno* 18. *E.* 3. much to the like effect that now it is: in which yeare alſo M. *Marrow* taketh it, that Iuſtices of Peace were firſt made, they having then firſt power given them to heare and determine felonies and treſpaſſes againſt the Peace, as appeareth by the ſtatute of 18. *E.* 3. *c.* 2.

The forme of the Oath is, at this day, as followeth.

1. YE ſhall ſweare, that as the Iuſtice of the Peace in the County of Cambridge, in all Articles in the Kings Commiſſion to you directed, you ſhall doe equall right to the poore, and to the rich, after your cunning, wit, and power, and after the Lawes and Cuſtomes of the Realme, and Statutes thereof made: And ye ſhall not be of counſell of any quarrell hanging before you: And that yee hold your Seſſions after the forme of Statutes thereof made: And the iſſues, fines, and amerciaments that ſhall happen to bee made, and all forfeitures which ſhall fall before you, yee ſhall cauſe to be entred without any concealment, (or imbezeling) and truely ſend them to the Kings Exchequer; yee ſhall not let for gift, or other cauſe, but well and truly you ſhall doe your Office of Iuſtice of the Peace in that behalfe: And that you take nothing, for your Office of Iuſtice of the Peace to be done, but of the King, and fees accuſtomed, and coſts limited by the ſtatute: And yee ſhall not direct, nor cauſe to be directed, any Warrant (by you to be made) to the parties, but ye ſhall direct them to the Bayliffes of the ſaid County, or other the Kings Officers (or Miniſters) or other indifferent perſons, to doe execution thereof. So helpe you God, &c.

The parts of this Oath, are ſhortly ſix:

1 That they ſhall doe equall right to rich and poore, and according to the Lawes and Statutes of the Realme.

2 That they ſhall not be of counſell with any perſon, in any matter depending before them.

3 That they ſhall keep their Seſſions according to the ſtatutes, which (as it ſeemeth by the preſcript of the ſtatute 2. *H.* 5. *cap.* 4.) ought to bee in the firſt weeke after the Feaſt of *S. Michael*, after the *Epiphanie*, after the clauſe of Eaſter, and after the tranſlation of Saint *Thomas*, (being the third day of July.) And accordingly the quarter Seſſions of the Peace, ought ſo ſtill to be holden throughout the Realme. See *Lambert*, 579, 580. And yet by the ſtatute of 14. *H.* 6. *cap.* 4. the Iuſtices of Peace of Middleſex are to keepe their Seſſions but twice in the yeare.

2. *H.* 5. 4. P. Iuſt. 5.

4 That all iſſues, fines, amerciaments, and forfeitures which happen before them, be by them truly entred, and ſent into the Exchequer.

5 That they take nothing for doing their Office but of the King, and the accuſtomed fees appointed by the ſtatutes.

6 That they ſhall not direct any their Warrants to the parties, but to the Bayliffes of the Countie, or to other the Kings Officers, or other indifferent perſons.

Now further concerning the times of the quarter Seſſions, it ſeemeth to be the intent or meaning of the afore recited ſtat. 2. *H.* 5. *c.* 4. that the weeks wherein the aforeſaid Feaſts of Saint *Michael*, the *Epiphanie*, and Saint *Thomas* falleth, muſt be firſt ended before the Seſſions can begin. So that if any of theſe three Feaſt dayes ſhall fall upon the Sunday, Munday, Tueſday, or Wedneſday, then ſhall the Seſſions (in our Countie of Cambridge) be upon Thurſday ſeven night after; but if any of thoſe Feaſts ſhall fall upon Thurſday, Friday, or Saturday, then ſhall our Seſſions be upon the next Thurſday after, and for our Eaſter Seſſions upon the Thurſday ſeven night after Eaſter day.

The other Oath concerning the Kings Supremacie, is by force of the ſtatute made *primo Eliz. cap.* 1. The forme of which Oath alſo followeth. P. Crowne 4

I *Michael Dalton*, doe utterly teſtifie and declare in my conſcience, that the Kings Highneſſe is the onely Supreme Governour of this Realme, and of all other his Highneſſe Dominions and Countries, as well in all Spirituall and Eccleſiaſticall things (or cauſes) as Temporall: And that no forrein Prince, Perſon, Prelate, State, or Potentate, hath, or ought to have any iuriſdiction, power, ſuperioritie, preheminence, or authoritie, Eccleſiaſticall or Spirituall, within this Realme: And therefore I doe utterly renounce and forſake all forrein iuriſdiction, powers, ſuperioricities, and authorities, and doe promiſe that from henceforth I ſhall beare faith and true allegeance to the Kings Highneſſe, his heires, and lawfull ſucceſſors, and (to my power) ſhall aſſiſt and defend all iuriſdiction, priviledge, preheminence and authoritie granted or belonging to the Kings Highneſſe, his Heires and Succeſſors, and united and annexed to the Imperial Crown of this Realme: So helpe me God, &c.

The Iuſtices of Peace ought to take this Oath for the Supremacie, in the open Court of Seſſions where they ſhall ſerve, by the ſtatute 5. *Eliz.* 1. (as Mr. *Crompton* holdeth,) and it were very fitting ſo to be: or elſe to be taken at the Aſſiſes by the Iudges, leſt (by indirect practice) it happen otherwiſe. Cromp. 11. P Crowne 5. vide.

Yet it is moſt uſuall that both theſe Oaths are taken by a ſpeciall commiſſion (*viz.* by a Writ of *Dedimus poteſtatem*, directed out of the Chancerie to ſome ancient Iuſtice of Peace, to take the ſame Oaths) which by them is to be certified into the ſame Court, at ſuch day as the Writ commandeth. The forme of which certificate, ſee *Hic poſtea, cap.* 230. See 1. El. c. 1

The Iuſtice of peace (or other perſon) to whom a *Dedimus poteſtatem* ſhall be directed, to take the Oaths of a new Iuſtice of Peace, if hee ſhall returne the Commiſſion, and the oaths to be taken, when they were not taken, this is fineable in the Star-chamber.

So if the new Iuſtice of Peace ſhall exerciſe this Office before hee hath taken both theſe Oathes, he is likewiſe fineable in the Star-chamber.

Cromp. 11. Co. 11. 98. Alſo if a Iuſtice of Peace ſhall not performe his Oath (concerning his Office) it ſeemeth hee is fineable in the Star-chamber, &c. Yet ſee *Co* 11. 98. a. That a man ſhall not be charged in any Court judiciall for the breach of a generall Oath, which he taketh when he is made an Officer, or Miniſter.

There is a third Oath, tending to the declaration of ſuch duty as every well affected ſubject by bond of Allegeance, and by the Law of God ought to beare to his Soveraigne; which Oath is by force of the ſtatute 3. *Iac. cap.* 4. And is to be taken alſo by all Iuſtices of Peace (among others) by the ſtatute 7. *Iac. cap.* 6. which Oath is uſually taken before the Iudges of the Aſſiſe of the ſame County, where the parties (to be ſworne) reſide. *The Oath of Allegeance.*

The forme of this Oath is thus.

I *Michael Dalton*, doe truly and ſincerely acknowledge, profeſſe, teſtifie and declare in my conſcience before God, and the World, That our Soveraigne Lord King *Charles*, is lawfull and rightfull King of this Realme, and of all other his Majeſties Dominions and Countries: And that the Pope neither of himſelfe, nor by any authority of the Church, or Sea of Rome, or by any other meanes with any other hath any power or authority to depoſe the King, or to diſpoſe any of his Majeſties Kingdomes or Dominions, or to authorize any forreine Prince to invade or annoy him, or his Countries, or to diſcharge any of his ſubjects of their Allegeance and Obedience to his Majeſtie, or to give licence or leave to any of them to beare Armes, raiſe tumult, or to offer any violence or hurt to his Majeſties royall Perſon, State, Government, or to any of his Majeſties ſubiects, within his Majeſties Dominions. Alſo I doe ſweare from my heart, that notwithſtanding any declaration or ſentence of Excommunication or deprivation made or granted, or to be made or granted by the Pope or his Succeſſors, or by any authority derived, or pretended to be derived from him, or his See, againſt the ſaid King, his Heires or Succeſſors, or any abſolution of the ſaid Subjects from their obedience, I will beare faith and true Allegeance to his Majeſty, his Heires and Succeſſors, and him and them will defend to the uttermoſt of my power, againſt all Conſpiracies and Attempts whatſoever, which ſhall be made againſt his or their Perſons, their Crowne and Dignity, by reaſon or colour of any ſuch Sentence or Declaration, or otherwiſe; and will doe my beſt endeavour to diſcloſe and make knowne unto his Majeſty his Heires and Succeſſours, all Treaſons and trayterous Conſpiracies, which I ſhall know or heare of to be made againſt him or any of them. And I doe further ſweare, That I doe from my heart abhorre, deteſt, and abjure, as impious and hereticall, this damnable Doctrine and poſition, That Princes which bee excommunicated or deprived by the Pope, may bee depoſed or murthered by their Subjects, or any other whatſoever. And I doe beleeve, and in conſcience am reſolved; That neither the Pope, nor any other perſon whatſoever, hath power to abſolve me of this Oath, or any part thereof, which I acknowledge by good and full authority to be lawfully adminiſtred unto mee, and doe renounce all Par-

dons and Diſpenſations to the contrary. And theſe things I doe plainly and ſincerely acknowledge and ſweare, according to theſe expreſſe words by me ſpoken. And according to the plaine and common ſenſe and underſtanding of the ſame words, without any equivocation, or mentall evaſion, or ſecret reſervation whatſoever. And I doe make this recognition and acknowledgement, heartily, willingly, and truly, upon the true faith of a Chriſtian. So helpe me God.

Nota quod Iuramentum debet habere Comites, Veritatem, Iudicium, & Iuſtitiam. Ier. 4. 2. *Et ſi iſta defuerint, non Iuramentum, ſed Perjurium erit: Nemo ſe ſeducat, qui enim per lapidem falſe jurat, perjurus eſt; Quacunque arte verborum, vel mentis reſervatione juret aliquis, Deus ita accipit ſicut ille cui juratur intelligit; Et minus malum eſt per deum falſum jurare veraciter, quam per Deum verum jurare fallaciter.*

Now for that all the authoritie and power of the Commiſſioners or Iuſtices of the Peace, ariſeth partly out of their Commiſſion, and partly out of the ſtatutes, I will firſt ſee downe the forme of the Commiſſion it ſelfe, ſhortly conſidering the parts thereof.

The forme of the Commiſſion of the Peace. Cap. 5.

Carolvs, &c. *Prædilecto & fideli Thomæ Domino Coventry de Allesburrough Domino Cuſtod. mag. ſigilli Angliæ, Richard Weſton Comiti Portland Theſaurario Angliæ, &c. Salutem.*

1 Ad paſcem conſervandum. *Sciatis, quod Aſſignavimus vos, conjunctim & diviſim & quemlibet veſtrum Iuſticiarios noſtros, ad pacem noſtram in Comitatu noſtro Cantabrigiæ conſervandum, Ac ad omnia Ordinationes & Statuta pro bono pacis noſtræ ac pro conſervatione ejuſdem, & pro quieto regimine & gubernatione populi noſtri edita in omnibus & ſingulis ſuis Articulis in dicto Comitatu noſtro (tam infra libertates, quam extra) juxta vim, formam, & effectum eorundem cuſtodiendum, & cuſtodiri faciendum. Et ad omnes, contra formam Ordinationum vel Statutorum illorum aut eorum alicujus, in Comitatu prædicto delinquentes, caſtigandum & puniendum, prout ſecundum formam Ordinationum & ſtatutorum illorum fuerit faciendum, Et ad omnes illos, qui aliqui, vel aliquibus de populo noſtro de corporibus ſuis, vel de incendio doworum ſuarum, minas fecerint, ad ſufficientem ſecuritatem de pace vel bono geſtu ſuo, erga nos & populum noſtrum inveniendam coram vobis, ſeu aliquo veſtrum venire faciendum. Et ſi hujuſmodi ſecuritatem invenire recuſaverint, tunc eos in priſonis noſtris (quouſque hujuſmodi ſecuritatem invenerint) ſalvo cuſtodiri faciendum.*

2 Ad Inquirendum. *Aſſignavimus etiam vos, & quoſlibet duo, vel plures veſtrum (quorum aliquem veſtrum, A. B. C. D. E. F. &c. unum eſſe volumus) Iuſticiarios noſtros, ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu prædicto (per quos rei veritas melius ſciri poterit) de omnibus & omnimodis feloniis, veneficiis, incantationibus, ſortilegiis, arte magica, tranſgreſſionibus, forſtallariis, regratariis, ingroſſariis, & extortionibus quibuſcunque: Ac de omnibus & ſingulis aliis malefactis & offenſis (de quibus Iuſticiarii pacis noſtræ legitime inquirere poſſunt, aut debent) per quoſcunque*

&

& qualitercunque in Comitatu prædicto factis ſive perpetratis, vel impoſterum ibidem fieri, vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu prædicto in conventiculis contra pacem noſtram, in perturbationem populi noſtri, ſeu vi armata ierunt, vel equitaverunt, ſeu impoſterum ire vel equitare præſumpſerint: Ac etiam de omnibus his qui ibidem ad gentem noſtram mathemandum, vel interficiendum in inſidiis jacuerunt vel impoſterum jacere præſumpſerint: Ac etiam de hoſtellariis & aliis omnibus & ſingulis perſonis, qui in abuſu ponderum vel menſurarum, ſive in venditione victualium, contra formam Ordinationum & Statutorum vel eorum alicujus, inde pro communi utilitate Regni noſtri Angliæ & populi noſtri ejuſdem, editorum deliquerunt, vel attemptaverunt, ſeu impoſterum delinquere, vel attemptare præſumpſerint in Comitatu prædicto: Ac etiam de quibuſcunque Vicecomitibus, Ballivis, Seneſchallis, Conſtabulariis, Cuſtodibus Gaolarum, & aliis officiariis, qui in executione officiorum ſuorum (circa præmiſſa ſeu eorum aliqua) indebite ſe habuerunt, aut impoſterum indebite ſe habere præſumpſerint, tepidi, remiſſi vel negligentes fuerunt, aut impoſterum fore contigerit in Comitatu prædicto: Et de omnibus & ſingulis articulis & circumſtantiis, & aliis rebus quibuſcunque per quoſcunque & qualitercunque in Com' prædicto factis ſive perpetratis, vel quæ impoſterum ibidem fieri, vel attemptari contigerit, qualitercunque præmiſſorum, vel eorum alicujus, concernentibus plenius veritatem. Et ad indictamenta quæcunque ſic coram vobis ſeu aliquibus veſtrum, capta, ſive capienda, aut coram aliis nuper Juſticiariis pacis in Comitatu prædicto facta, ſive capta (& nondum terminata) inſpiciendum: Ac ad proceſſus inde verſus omnes & ſingulos, ſic indictatos, vel quos coram vobis impoſterum indictari contigerit (quouſque capiantur, reddant ſe, vel utlagentur) faciendum & continuandum. Et ad omnia & ſingula felonias, veneficia, incantationes, ſortilegia, artes magicas, tranſgreſſiones, forſtallarias, regratarias, ingroſſarias, extortiones, conventicula, indictamenta prædicta, ceteraque omnia & ſingula præmiſſa, ſecundum leges, & ſtatuta regni noſtri Angliæ prout in hujuſmodi caſu fieri conſuevit aut debuit) Audiendum & Terminandum, & ad eoſdem delinquentes, & quemlibet eorum, pro delictis ſuis, per fines, redemptiones, amerciamenta, forisfacturas, ac alio modo (prout ſecundum legem & conſuetudinem Regni noſtri Angliæ, aut formam Ordinationum vel Statutorum prædictorum, fieri conſuevit aut debuit) caſtigandum & puniendum.

Indictamenta Capere.

Proceſſus facere.

Ad audiend. & terminand

Proviſo ſemper quod ſi Caſus difficultatis ſuper determinatione aliquorum præmiſſorum coram vobis vel aliquibus duobus vel pluribus veſtrum evenire contigerit: tunc ad judicium inde reddendum, niſi præſentia unius Juſticiariorum noſtrorum, de uno vel de altero Banco, aut Juſticiariorum noſtrorum ad aſſiſas in Comitatu prædicto capiendas aſſignatorum coram vobis vel aliquibus duobus, vel pluribus veſtrum minime procedatur.

Exceptio.

Et ideo vobis, & cuilibet veſtrum mandamus quod circa cuſtodiam pacis, Ordinationum, Statutorum, & omnium & ſingulorum ceterorum præmiſſorum, diligenter intendatis. Et ad certos dies, & loca, quæ vos vel aliqui hujuſmodi, duo vel plures veſtrum (ut prædictum eſt) ad hoc provideritis, ſuper præmiſſis faciatis Inquiſitiones & præmiſſa omnia & ſingula audiatis & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad Juſtitiam pertinet, ſecundum legem & conſuetudinem Regni noſtri Angliæ:

Charge to the Juſtices.

Salvis nobis amerciamentis, & aliis ad nos inde ſpectantibus.

To the Sheriffe. *Mandamus etiam tenore præſentium Vicecomiti noſtro Cantabrigiæ, quod ad certos dies & loca (quæ vos vel aliqui hujuſmodi duo vel plures veſtrum ut prædictum eſt, ei ini prædictum eſt, ſcire faciatis) venire faciat coram vobis vel hujuſmodi duobus vel pluribus veſtrum (ut dictum eſt) tot & tales probos & legales homines de balliva ſua (tam infra libertates quam extra) per quos rei veritas in præmiſſis melius ſciri potuit & inquiri.*

To the Cuſtos Rotulor. *Aſſignavimus denique te præfatum Iohannem Cuts Militem, Cuſtod. Rotulorum pacis noſtræ in dicto Comitatu noſtro. Ac propterea tu, ad dies & loca prædicta, Brevia, Præcepta, Proceſſus, & Indictamenta prædicta, Coram te & dictis ſociis tuis, venire facias, ut ea inſpiciantur & debito fine terminentur, ſicut prædictum eſt. In cujus rei teſtimonium, &c: Datum, &c.*

This Commiſſion hath two parts, containing the power of the Iuſtices of Peace.

The firſt *Aſſignavimus* (or firſt part) of the Commiſſion doth give power to any one Iuſtice of Peace (more, or all) to keepe, and cauſe to be kept the peace, and all Ordinances and Statutes made for the conſervation of the peace, and for the quiet government of the people: As namely, the ſtatutes made for Huy and Cry after Felons, And the ſtatutes made againſt Murtherers, Robbers, Felons, Night-walkers, Affrayers, Armour worne *in terrorem*, Riots, Forcible Entries, and all other force and violence; all which be directly againſt the Peace. The particulars whereof you ſhall find more fully hereafter, and moſt of them under their proper Titles. 5 Edw. Weſt. 1. 11. E. 2. 2. E. 3. 3. 6. 2. E. 3. 3.

By this firſt clauſe in the Commiſſion, the Iuſtices of Peace have, as wel all the ancient power touching the peace, which the Conſervators of the Peace had by the Common Law, as alſo that whole authority which the ſtatutes have ſince added thereto. Lamb. 468

The meanes which the Iuſtices of Peace muſt uſe for the keeping of the Peace, and for the execution of theſe ſtatutes, is as followeth.

For to prevent the breach of the Peace, the Iuſtice of Peace may ſend his Warrant for the party, and may take ſufficient ſureties of him (by Recognizance) for keeping the Peace, or for the good behaviour, (as the caſe ſhall require:) And may ſend the party to the Gaole for non finding ſuch ſureties.

But for theſe ſtatutes made for the Peace, they are to be executed according to ſuch preſcript and order, as themſelves doe deliver, wherein, if no power at all be expreſly given to any one Iuſtice of Peace alone, then can he not otherwiſe compell the obſervation thereof (as it ſeemeth) than by admonition onely: In which behalfe if he ſhall not be obeyed, he may preferre the cauſe at the Seſſions, and ſo worke it to a preſentment upon the ſtatute. And ſo (by the helpe of his fellow Iuſtices) to heare and determine thereof, as Law requireth. Lamb. 47.

And here note, that whereas before the making of the ſtatute, 1. E. 3. *cap.* 16. there were no Iuſtices of Peace within this Realme (but onely conſervators of the peace, as is before ſhewed:) And whereas, by the Commiſſion of the Peace preſently after, and to this day, the Iuſtices of

Peace

Peace had, and ſtill have the ſtatute of *Wincheſter* given them in charge, to execute the ſame, which ſtatute of *Wincheſter* (being made 13. *E.* 1.) was long before there were any Iuſtices of Peace: by this it may appeare, that the King by his Commiſſion may commit the execution of the ſtatutes and Lawes to whom he ſhall pleaſe. And ſo alſo a Iuſtice of Peace, by vertue of the Commiſſion may execute any ſtatute, whereunto he ſhall be enabled by the ſaid Commiſſion, although there ſhall be no ſuch expreſſe power given to him, ſo to doe, by the words or letter of the ſame ſtatute.

The ſecond *Aſſignavimus* in the Commiſſion doth give authority to any two Iuſtices of the Peace (or more, the one being of the *Quorum*) in theſe five things following.

1 To inquire (by a Iury) of all offences mentioned within the Commiſſion.

2 To take, and view all Indictments or Preſentments of the Iury.

3 To grant out proceſſe againſt the offenders, thereby to cauſe them to come and anſwer.

4 To heare and try all ſuch offences (upon any former or future Indictments taken before themſelves, or before any other Iuſtices of the Peace) after the offenders be come in.

5 To determine there, by giting iudgement and inflicting puniſhment upon the offenders, according to the Lawes and ſtatutes.

But all the buſines included within the ſecond *Aſſignavimus*, belongeth to the Seſſions of the Peace; And therefore I leave (here) to write any further thereof.

Note alſo, that there be divers ſtatutes which be not ſpecified within the Commiſſion, and yet are committed to the charge and care of the Iuſtices of Peace; But all ſuch ſtatutes which doe give expreſly any power or authority to the Iuſtices of Peace, are to them a ſufficient Warrant and Commiſſion of themſelves, although they be not recited in the Commiſſion: And all ſuch ſtatutes are alſo to be executed by them according as the ſame ſtatutes themſelves doe ſeverally preſcribe and ſet.

And for that moſt of the buſineſſe and practice of the Iuſtices of Peace doth conſiſt and lie in the execution of ſuch ſtatutes as are committed to their charge (whether they be ſpecified in the Commiſſion, or not ſpecified there) the numbers of which ſtatutes are exceedingly increaſed of late yeares, to the over-burthening of all the Iuſtices of Peace: And (rather) to give ſome little helpe to ſuch Iuſtices of Peace, who (being deſtitute of the aſſiſtance of ſuch as are learned in the Lawes) are daily to adminiſter Iuſtice, and to execute their Office at home, and out of their Seſſions; I have for their better eaſe herein, endevoured (in this Treatiſe) to ſet downe more orderly and particularly the ſeverall parts and branches of every ſuch ſtatute by it ſelfe, under their proper titles, with further referments to the Statutes themſelves at large, or to the Abridgments.

CAP.

Cap. 6.

Their power. THe Power and Authority of the Iuſtices of Peace (as well given them by the ſaid Commiſſion, as by the ſtatutes) is in ſome caſes Miniſteriall or Regular, and limited as a Miniſter onely; and in ſome other caſes Judiciall or Abſolute, and as a Judge.

Miniſteriall, when he is thereto commanded by an higher Authority:

As upon { A *Supplicavit* (out of the Chancery, or Kings Bench) for the taking of Surety for the Peace, or good behaviour: See hereof *tit.* Surety for the Peace, *Cap.* 73. / A Writ upon the ſtatute of Northampton, upon a Forcible Entry: See hereof *tit.* Forcible Entry, *Cap* 22.

In the execution of which two Writs, the Iuſtice of Peace may proceed no further, or otherwiſe, than he is authorized by ſuch Writ; and is alſo to returne the Writ, and to certifie his doings therin, into the Court whence the Writ came.

But in all other caſes within their authority, the power of the Iuſtices of Peace, ſeemeth to be Abſolute (in ſome manner) ſo as they and every of them, may of their owne power proceed *ex officio*, and as a Iudge; yet this their power is alſo limited for they may neither hang a man for a treſpaſſe, nor fine him for felony, but muſt proceed in all things according as they are preſcribed by the Commiſſion, and by the ſaid ſeverall ſtatutes.

Diſcretion. And yet for that all conſiderable circumſtances can neither bee comprehended in the Commiſſion, nor foreſeene at the time of the making of the ſtatutes, therefore oftentimes ſome things are referred to the conſideration of the Iuſtices of Peace, and left to be ſupplied by them in their diſcretion.

The Commiſſion of the Peace (in it ſelfe) doth leave little (or nothing) to the diſcretion of the Iuſtices of Peace; but doth limit them to proceed *ſecundum Leges, Conſuetudines, Ordinationes & Statuta:* And indeed to leave too much to diſcretion, were to open a gap to corruption.

But by ſome late ſtatutes, ſome things are (therein by ſpeciall words) referred to the diſcretion of the Iuſtices of Peace; ſome out of Seſſions, and ſome at their Seſſions.

I will here onely ſet downe ſome particulars of ſuch things as are referred to their diſcretions out of their Seſſions.

Some things referred to the diſcretion of one Iuſtice of Peace out of the Seſſions, which you may more fully ſee hereafter in this Booke, in the ſeverall Titles here under written.

Fiſh-dayes. FLeſh killed in Lent, one Iuſtice of Peace may give to the poore at his diſcretion.

One Iuſtice may compell any perſon meet (in his diſcretion) to be bound an Apprentice.

One

One Iuſtice of Peace may cauſe all ſuch perſons as be meete to labour (by his diſcretion) to worke in Harveſt and Hay time. *Labourers.*

Malts that be deceitfull, may be ſold, &c. at ſuch reaſonable prices, as one Iuſtice of Peace (in his diſcretion) ſhall thinke expedient. *Malt.*

One Iuſtice of Peace (as it ſeemeth) may (by his diſcretion) give directions to the ſearchers, watchmen, and keepers, &c. of perſons infected with the plague. See *Cromp.* 122. *Plague.*

Treſpaſſers in Corne, Orchards, Hedges, or Woods, which (in the diſcretion of the Iuſtice) are not thought able to give ſatisfaction, ſhall bee whipped. *Treſpaſſers*

It ſeemes that one Iuſtice of Peace may heare and determine by examination or otherwiſe, by his diſcretion, the offences committed in Tyle-making. *Tyle.*

Some things referred to the diſcretion of two Iuſtices of P. out of the Seſſions.

TWo Iuſtices may allow and diſcharge Alehouſe-keepers, as they ſhall thinke meet. *Alehouſes.*

Two Iuſtices may take Recogniſance of Alehouſe-keepers, for keeping good orders, &c. according to their diſcretions.

Two Iuſtices may appoint Overſeers of woollen cloth by the yeare, or for ſhorter time, by their diſcretions. *Cloth.*

Clothiers, their workfolkes imbezeling any part, ſhall be puniſhed, &c. by the diſcretion of two Iuſtices.

Two Iuſtices may grant their Warrant to call before them any perſon or perſons, which in their diſcretion ſhall bee thought fit to diſcouer any offence in the making of deceivable Woollen Cloth, &c. 21. *Iac. cap.* 18.

Servants, &c. aſſaulting their maſter, may be impriſoned for one yeare, or leſſe, at the diſcretion of two Iuſtices. *Labourers.*

Two Iuſtices may (by their diſcretion) compell women to ſerve, and for ſuch wages, and in ſuch ſort, as they thinke meet.

Two Iuſtices may taxe others of the County (by their diſcretions) towards the reliefe of places infected, &c. *Plague.*

Two Iuſtices may tax any in the Hundred (by their diſcretions) towards the reliefe of the poore of any Towne that is overcharged. *Poore.*

Two Iuſtices may diſpoſe of all forfeitures, to grow upon the ſtatutes of Rogues at their diſcretions, &c. *Rogues.*

Two Iuſtices may aſſeſſe (according to their diſcretions) proportionably, all the Pariſhes within the Hundred, towards a contribution, for the parties charged upon a robbery, &c. *Robberie.*

Two Iuſtices ſhall take order (by their diſcretion) to ſet poore Souldiers, &c. to worke, that cannot get worke, and for want of worke may taxe the Hundred (by their diſcretions) for the reliefe of ſuch Souldiers, &c. *Souldiers.*

Two Iuſtices may fine (by their diſcretions) the head Officers in Boroughs and Market Townes, that doe not view, &c. all weights and meaſures; or doe not breake and burne the defective. *Weights.*

Two

Two Iuſtices may fine (by their diſcretions) all buyers and ſellers with unlawfull Weights and Meaſures.

There be ſome other ſtatutes, and ſome other Caſes, wherein the diſcretion of the Iuſtices of Peace (out of their Seſſions) is tolerated: but the counſell of *Cicero*, herein is to be obſerved; *Sapientis eſt Iudicis cogitare tantum ſibi eſſe permiſſum, quantum ſit commiſſum ac creditum.*

Alſo the ſayings of the right honourable, and late reverend Judge and Sage of the Law (in his fift part in *Rookes* caſe, and in his tenth part in *Kighteleyes* caſe) are worthy obſervation, *ſc.* That diſcretion is a knowledge or underſtanding to diſcerne betweene truth and falſhood, betweene right and wrong, betweene ſhadowes and ſubſtance, betweene equity and colourable gloſſes and pretences, and not to doe according to our wils and private affections, for *talis diſcretio diſcretionem confundit*; and therefore in both the recited Caſes, it was holden, that though the words in the Commiſſion of Sewers, doe give authoritie to thoſe Commiſſioners to doe according to their diſcretions, that yet their diſcretion ought to be limited and bounded with the rules of Reaſon, Law, and Iuſtice; and their proceedings muſt bee *ſecundum Legem & Conſuetudinem Angliæ*; and ſo of other like Commiſſioners. Againe, Diſcretion (ſaith he) is *ſcire vel diſcernere per legem quid ſit juſtum: viz.* to diſcerne, by the right Line of Law, and not by private opinion, *Co. L.* 227. and therefore every Iudge, Iuſtice, (or Commiſſioner) ought to have *duos Sales*, viz. *Salem ſapientiæ, ne ſit inſipidus; Et ſalem conſcientiæ, ne ſit diabolus.* Co. 5. 101. & 10, 142.

And (as Maſter *Lambert* well ſaid) no way better ſhall the diſcretion of a Iuſtice of Peace appeare, than if he (remembring that hee is *lex loquens*) ſhall containe himſelfe within the liſts of Law, and ſhall not uſe his diſcretion, but onely where both the Law permitteth, and the preſent caſe requireth.

In all caſes therefore where the Statutes doe referre the triall of offenders, (or hearing and determining of offences) to the diſcretion of the Iuſtice or Iuſtices of Peace, out of Seſſions; it is very requiſite, that upon ſuch tryall or hearing, the ſaid Iuſtices take due examination (of the offenders themſelves, and alſo of credible Witneſſes) as well concerning the fact it ſelfe, as the circumſtances thereof, and upon confeſſion, or other due proofe of the offence, then to proceed according to Law and Iuſtice.

But not to denounce or give ſentence before the party bee cited, and heard to anſwer for himſelfe; For this defence is allowed by Gods Law, *Gen.* 3. 9. *Adam*, where art thou? and *Gen.* 4. 9. Where is thy brother *Abel*? And in the caſe of the five Cities, I will goe downe and ſee, *Gen.* 18. 21.

Note, that in all caſes where the ſtatute referreth the triall; &c. to the diſcretion of the Iuſtices, the ſaid ſtatutes themſelves ſeeme alſo to enable the ſaid Iuſtices of Peace, to take the examinations of witneſſes, and that upon oath: *vide tit.* Heare and Determine, *cap.* 66.

Note further, that the Iuſtices of Peace, out of their Seſſions, are now armed with farre more ample authority and power, than the ancient Conſervators of the Peace were: for the Iuſtices of Peace have double power given

given them, the one of Iuriſdiction, to convent the offenders before them (by their Warrant) and (in divers caſes out of their Seſſions) to examine, heare and determine the cauſe; the other of Coertion (*ſc.* after the cauſe heard) to conſtraine them to the obedience and obſervance of their order and decree (which notwithſtanding muſt be according to the rules of Law and Iuſtice, as is aforeſaid:) whereas the ancient conſervators of the peace had no juriſdiction or authority at all either to convent the offender before them, or to examine, heare or determine the cauſe; but had onely coertion, prehenſion (or puniſhment of an offender) in ſome few caſes, as you may ſee before, *cap.* 1.

Plo. 37.] And here I muſt further put the Iuſtices of Peace in minde, that their authoritie and power is limited to be by them exerciſed, onely within the County or Counties where they be in commiſſion; and yet in that or thoſe County or Counties, the Iuſtices of Peace of the County muſt not intermeddle in any Citie there, which is a Countie of it ſelfe, nor in any Citie or corporate Towne there, (though it be no Countie of it ſelfe, but within the Countie) which have their proper Iuſtices of Peace within themſelves, by the Kings Charter, or Commiſſion, (eſpecially if in ſuch Charter there be any ſpeciall words of prohibition, that the Iuſtices of the Shire: *Non ſe intromittant, &c.* (except ſuch Quuntrie Iuſtices, ſhall alſo be in commiſſion in ſuch City or Towne corporate.

Lamb. 48. 69. Cromp. 8. & 181.

But in other corporate Townes which have not their proper Iuſtices of Peace; as alſo in all Liberties and Franchiſes, (within the Countie) which have the returne of Writs, but haye not their proper Iuſtices; there the Iuſtices of the peace of the countie ought to execute their authority, and that by the words of their commiſſion.

20. H. 7. 6. 7. Crom. ibid.

Againe, if a Pariſh ſhall extend into two or more counties; or if part thereof ſhall lie within the liberties of any Citie or Towne Corporate (which haue their proper Iuſtices) and part without, then as well the Iuſtices of peace of every Countie, as alſo the Iuſtices (or Officers) of ſuch City or Towne corporate ſhall intermeddle only within their owne proper and diſtinct limits and bounds (*ſc.* within ſo much of the ſaid pariſh, &c. as lieth within their ſeverall liberties and limits) and not to invade or deale in other juriſdictions; for it ſhall be againſt Law and Reaſon, where offices and juriſdictions are ſeverall, that the one ſhould intermeddle within the juriſdictions of the other.

See hic. tit. Poore.

Co. 4. 46.

Vbi quis delinquit, ibi puniatur. See tit. Homicide.

Neither ſhall any Iuſtice of peace deale in, or puniſh any treſpaſſe or other like offence, committed in any other countie (againſt any penall ſtatute) though ſuch offender ſhall be brought before him (ſee the Commiſſion on the firſt *Aſſig. Et poſtea tit.* Guns, Labourers, and partridges) except the ſtatute ſhall ſpecially enable them thereto, as the ſtatutes 1 *Iac. & 7 Iac.* Which doe enable the Iuſtice of the county, where the offence ſhall bee committed, or the offender apprehended (ſee *tit. Partridges*) and the like: or that it be for matters of the peace, or in caſes of Felonie (ſee *tit. Affrayes and Felony*)

33. H. 8. ca. 5. Eliz. P. 12. 23. Eliz. c. 10

Neither ſhall any Iuſtice of peace, for the time that hee ſhall make his abode, or be out of the County (where hee is in Commiſſion) intermeddle to take any Recognizance, or any examination, or otherwiſe to exerciſe

erciſe his authority in any matter, that ſhall happen within the Countie where he is in Commiſſion; neither can he cauſe one to be brought before him out of the County where he is in Commiſſion, into the other County; for being out of the Countie where he is in commiſſion, hee is but as a private man. See *hic tit Affray, Impriſonment, Robbery, & Warrant: & Plo.* 37 & 13. *E.* 4. 8.

And yet a Sheriffe being out of his County, may make a Pannell, or may make returne of any Writ, 9. *H.* 4. 1.

Now my purpoſe is to ſet downe more particularly what things the Iuſtices of Peace out of their Seſſions of the Peace, may doe in the execution of their Commiſſion; or of the Statutes wherewith they are charged. And herein you muſt obſerve that ſome things are permitted to be executed by any one, two, or more Iuſtices; and ſome other things are more ſpecially appointed and appropriated (by ſome Statutes) to ſome one certaine Iuſtice of Peace, or to two or moe Iuſtices; either in regard that ſuch Iuſtice or Iuſtices, is or are next the place, or are of the *Quorum*, or the like.

And here note, that whatſoever any one Iuſtice of Peace alone may doe (either for the keeping of the Peace, or in other execution of the Commiſſion, or Statutes) the ſame alſo may lawfully be done and performed, by any two, or moe Iuſtices.

But where the Law giveth authority to two, there one alone cannot execute this: For *Vna perſona non poteſt ſupplere vicem duarum, & plus vident oculi quam oculus.* See *Co.* 5. 94. & *Plo.* 393. a, b. *Co. L.* 181. Co. 4. 46.

And yet where a Statute appointeth a thing to be done by two Iuſtices of Peace (or moe,) if the offence be any miſdemeanor, or matter againſt the Peace, there, upon complaint made (of the offence) to any one of thoſe Iuſtices of Peace, it ſeemeth that one of thoſe Iuſtices may grant out his Warrant to attach the offender, and to bring him before the ſame Iuſtice and the other Iuſtice ſo appointed (at ſome convenient place) & then they to heare and determine the ſame: Alſo upon complaint thereof made to any other Iuſtice, he may give Warrant to bring the offender before himſelfe or any other Iuſtice, to finde ſureties for his appearance at the next generall Seſſions, there to make anſwere to ſuch his offence: or elſe hee may binde the offendour to the good behaviour, and ſo to appeare at the next Seſſions, if the ſaid Iuſtice ſhall ſee any juſt cauſe ſo to doe. But one Iuſtice of Peace alone may not in any wiſe meddle to heare and determine the ſame.

Alſo when things by ſtatute are appropriated to ſome one certaine Iuſtice, or to moe, there ſuch Iuſtice or Iuſtices are to purſue ſuch their authority accordingly, and yet if ſuch Iuſtice or Iuſtices ſhall therein joyne with any other Iuſtice of the ſame County, it may ſeeme no leſſe lawfull and warrantable, *tamen quære & vide Co.* 11. 92. where an authority is given to foure, or to one of them; if two of them ſhall execute this, it ſeemeth they have not purſued their authority. So if an authority be given to three, *conjunctim & diviſim*, if two of them doe it in the abſence of the third, it is void, *Dyer* 82. for that the authority is not purſued. But *Co. L.* 181. b. maketh a difference where the thing is *pro bono publico*, and where Co. 11. 92.

pro

pro private; as if a Sheriffe upon a *Capias* maketh his Warrant to 4. or 3. joyntly or ſeverally to arreſt the defendant, two of them may arreſt him, for that it is for the execution of Juſtice, which is *pro bono publico*, and therefore ſhall be more favourably expounded, then when it is only for private.

Plo. 26. b. But to come to the former caſes of our Juſtices of Peace, there ſeemeth a generall rule to be put in *Stradlings* caſe (in M. *Plo.*) that when a thing is appointed by any Statute to be done by, or before one perſon certaine, that ſuch thing cannot be done by or before any other, but that it ought to be done as the ſtatute hath appointed, and by ſuch expreſſe deſignation of one (or power given to one) certaine perſon, all others are excluded.

See Co. 11. 59. & 64.

18. El. 3. And yet whereas by the Statute of 18. *Eliz.* the order to bee taken for a baſtard childe, is appropriated to two Juſtices of Peace (one being of the *Quorum*) in or next unto the Pariſh where ſuch child ſhall be borne, if two ſuch Juſtices cannot agree upon the reputed father (or in making ſuch order as the Statute requireth, or in other execution of that ſtatute) *Quære* what is to be done *& vide hic cap.* 11. But I have knowne the caſe lately moved to the Judges of Aſſiſe, who thought it fit that ſuch difference betweene the two Iuſtices of Peace ſhould bee referred to the hearing of the whole Bench, and the matter to be re-examined by them, and what order ſhould be therein ſet downe by the Bench, the ſame to ſtand good.

But in ſuch things appropriate to ſome one or more Iuſtices of Peace, if without ſuch Iuſtice or Iuſtices, all (or any of) the reſidue of the Iuſtices of that County ſhall intermeddle therein, ſuch their doings ſeemeth no wayes warrantable, but ſuch their proceedings to be *Coram non Iudice*, and that there is no neceſſitie to obey them therein, as being no lawfull Iudges of the cauſe.

What things one Iuſtice of Peace alone, may doe out of the Seſſions: and where the aid or aſſiſtance of two Iuſtices of Peace (or more) is required. Ale-houſes, &c. CAP. 7.

THe true and principall uſe of Innes, Alehouſes, and Victualling houſes, is twofold, *ſc.* either for the receit, relefe, and lodging of wayfaring people travelling from place to place about their neceſſary buſineſſe, or for the neceſſary ſupply of the wants of ſuch poore perſons as are not able by greater quantities to make their proviſion of victuals: and is not meant for entertainment or harbouring of lewd or idle people, to ſpend or conſume their money or time there (as appeareth by the preamble of the Statute made 1. *Iac. Reg. c.* 9.) And therefore to prevent the miſchiefes, and great diſorders hapning daily by the abuſes of ſuch houſes, his ſaid Majeſtie of late famous memory, and our now gracious Soveraigne Lord King *Charles*, haue graciouſly beene pleaſed, that divers good and profitable Lawes ſhould be made for the redreſſe thereof, as followeth.

Every keeper of Taverne, (keeping alſo an Inne or victualling in his houſe) and every Alehouſe-keeper, Inne-keeper, and Victualler, which ſhall ſuffer any Towneſman, or any Handicraftſmen or Labourer, working in the ſame Citie or Towne, to remaine and continue drinking in their ſaid houſe (except ſuch ſhall be invited thither by a traveller, and during his neceſſary aboad there; & except handicraftſmen, labourers, and workemen, upon the working day, for one houre at dinner, or ſojourning or lodging there; or except they be allowed by two Iuſtices of Peace) the ſaid offence being ſeene by any Iuſtice of Peace within his limits, or being confeſſed by the offender, before the Iuſtice of Peace, or being proved before any Iuſtice of Peace, by one witneſſe upon oath, every ſuch Taverner, Alehouſe-keeper, &c. ſhall forfeit for every ſuch offence, ten ſhillings. 3. Ia. 9. 21. 24. Ia. 7. & 18 1. Car. i. 4.

And note, that the voluntary confeſſion (before the Iuſtice of Peace, or other perſon authorized to miniſter the oath) of any offender againſt either of the Statutes of 1. *Iac. cap.* 9. or 4. *Iac. cap.* 5. ſhall ſuffice to convince the perſon ſo offending: and after ſuch confeſſion, the oath of the party ſo confeſſing, ſhall be taken, and be a ſufficient proofe againſt any other offending at the ſame time, 21. *Iac. Reg. cap.* 7.

If any Taverner (keeping alſo an Inne, or Victualling in his houſe) or any Inne-keeper, Alehouſe-keeper or Victualler, ſhall at any time utter or ſell within his houſe, or without, leſſe than one full Alequart of the beſt Beere or Ale for j.d. and of the ſmall two quarts for j.d. (the ſaid offence being proued before any Juſtice of Peace, by one witneſſe upon oath) then every ſuch Taverner, Inne-keeper, &c. ſhall forfeit for every ſuch offence twenty ſhillings.

And yet note, that whereſoever any conviction ſhall be before the Iuſtice of Peace, by or upon the oath or teſtimony of any other perſon (than the delinquent himſelfe) there the Iuſtice of Peace muſt firſt ſend for, or convent the delinquent before him, to make anſwer, &c. and to heare and examine him of the offence, &c. for it may be that he can make ſufficient defence or excuſe of the fact. And this was the direction of Sir *Nicholas Hyde*, Lord chiefe Iuſtice of the Kings Bench; and well agreeth with the rule here before, *cap.* 2. *Qui aliquid ſtatuerit parte inaudita altera, æquum licet ſtatuerit, haud æquus eſt.*

Every perſon that ſhall continue drinking in any Inne or Alehouſe, &c. in the Towne where he then dwelleth (contrary to the former Statute made *primo Iac.*) the ſaid offence, being ſeene by any Iuſtice of Peace, or being proved before any Iuſtice of Peace, as aforeſaid, ſuch perſons ſhall forfeit for every ſuch offence, three ſhillings foure pence. 4. Ia. 5. 21. Ia. 7.

If any other perſon (whereſoever his or their habitation or abiding be) ſhall be found by view of any Iuſtice of Peace, or by his owne confeſſion, or proofe of one witneſſe) to be tipling in any Inne, Alehouſe, or Victualling houſe; every ſuch perſon ſhall be adjudged to be within the ſaid Statutes of 1. *Iac. cap.* 9. & 4. *Iac. cap.* 5. as if hee inhabited and dwelt in the Citie, Towne corporate, or other Towne or Village, where the ſaid Inne, Alehouſe, or Victualling houſe is or ſhall be, where hee ſhall be ſo found tipling; and ſhall incurre the like penalty, and the ſame to bee in ſuch ſort levied and diſpoſed, as in the ſaid Act is expreſſed, concerning ſuch

as there inhabite: And the voluntarie confeſſion of ſuch an offender ſhall ſuffice to convince himſelfe; and after his oath ſhall be a ſufficient proofe againſt any other offending at that time, 21. *Iac. cap. 7.*

1. Caroli. 4. Everie Taverner (keeping alſo an Inne, or Victualling in his houſe) and everie Inne-keeper, Alehouſe-keeper, and other Victuallers which ſhall ſuffer any perſon (whereſoever his dwelling be) to tipple in the ſaid houſe contrarie to the true intent of any of the ſaid former ſtatutes ſhall be adjudged within the ſtat. 1. *Iac. cap. 9.*

So that now by theſe ſtatutes, no perſon may come to tipple in any ſuch Taverne, or in any Inne, Ale-houſe, or Victualling houſe, in the ſame Towne where he dwelleth, nor within two miles thereof, except he be a Traveller; And ſo Sir *Francis Harvy*, Knight, delivered it in his charge, at *Cambridge* Summer Aſſiſes, *An.* 1629. But the ſtatute, 21. *Iac.* & 1. *Caroli*, ſeeme to forbid all tippling in ſuch houſe, whereſoever they be, and by whomſoever it be.

Any Iuſtice of Peace in any countie (and any Iuſtice of peace, or other head Officer, in any Citie or Towne corporate, within their limits) ſhall have power (upon his owne view, confeſſion of the partie, or proofe of one witneſſe upon oath) to convince any perſon of drunkenneſſe, whereby ſuch perſons ſo convict ſhall incurre the forfeiture of five ſhillings for every ſuch offence, to be paid within one weeke next after ſuch conviction, into the hands of the Church-wardens of the Pariſh where the offence ſhall be committed, &c. And if the offender bee not able to pay the ſaid ſumme of five s. then he ſhall be committed to the ſtockes for every ſuch offence, there to remaine by the ſpace of ſix houres, 4. *Iac.* 5. 21. *Iac.* 7.

4. Ia. 5. And for the ſecond offence of drunkenneſſe, everie perſon convict thereof as aforeſaid, ſhall be bound with two ſureties in the ſumme of ten pounds with condition for the good behaviour, by any one Iuſtice of Peace, or other head Officer aforeſaid (as it ſeemeth) 21. *Iac. cap.* 7. And for want of ſuch ſureties to be ſent to the Gaole.

Now for to know a drunken man the better, the Scripture deſcribeth them to ſtagger and reele to and fro, *Iob* 12. 25. *Eſay* 24. 20. And ſo where the ſame legs which carrie a man into the houſe, cannot bring him out againe, it is a ſufficient ſigne of drunkenneſſe.

5. Ia. 9. P. 6. Every Iuſtice of Peace (within his limits) hath authority to miniſter the ſaid oath to ſuch witneſſes, 21. *Iac. cap.* 7.

1 R. 4. Ia. P. 7. 8. All and every the forfeitures aforeſaid, ſhall be to the uſe of the poore of the Pariſh, where ſuch offence ſhall be committed: and the ſaid forfeitures are to be levied by diſtreſſe and detainer of the offenders goods, (and after ſix dayes by ſale thereof, &c.) by the Conſtables or Church-wardens of the ſame Pariſh, upon a Warrant from any one (or moe) Iuſtices of Peace, under his or their hand and ſeale, 1. *Id. cap.* 9. 21. *Id. cap.* 7.

The ſaid forfeitures of the Taverner, Alehouſe-keeper, Inne-keepers, and Victuallers, being diſtrained for, as aforeſaid, if within ſix dayes next enſuing, they ſhall not pay the ſaid forfeiture, then may the Conſtables or Church-wardens, by vertue of the ſaid Warrant, preſently appriſe and ſell the ſaid diſtreſſe; but they muſt deliver the ſurpluſage to the partie of whom the diſtreſſe was taken, 1. *Iac.* 9. P. 7.

For every offence aforesaid, the Alehouse-keeper, Inne-keeper, and other Victualler, for want of sufficient distresse to bee taken for such forfeitures, shall (by any one Iustice of Peace) be committed to the common Gaole, there to remayne untill the said penalty be payed. 1 Ia. 9. P. 7.

Every Townesman, or other person whatsoever, &c. that shall continue drinking, or be found tipling in any Inne, Alehouse, or other Victualling house, contrary to the Statute, (for want of sufficient distresse, and not being able to pay the said forfeiture of three shillings foure pence) shall be set in the Stocks for every such offence, foure houres (upon warrant or commandement from any one such Iustice of Peace.) 21 Ia. 7. 4 Ia. 5.

If the Constables and Church-wardens, shall neglect to levie, or shall not levy the said severall forfeitures of Alehouse-keepers, &c. suffering tippling in their houses, or for their measure of Ale or Beere, or in default of distresse shall neglect by twenty dayes, to certifie the same default of distresse to the Iustice of Peace; then every such Constable and Church-warden shall forfeit for every such default forty shillings to the use of the poore, to be levied by distresse (of the offenders goods) by warrant made to any other indifferent person, from any one (or more) Iustices of Peace under their hand and seale: The said distresse to be taken and detained for the said forfeiture, for the space of sixe dayes; within which time if payment be not made, then the same goods to be presently prised and sold; and the surplusage to be delivered to the party, &c. And for want of sufficient distresse, such Constables and Church-wardens to be (by any such Iustice of Peace) committed to the common Gaole, there to remayne untill they have payed the same forfeiture. 1 Ia. 9. P. 8.

Also if any Constable, or other inferiour Officer of the Parish, shall neglect to execute the Iustices Warrant, for the due correction of, or for the levying of the penalties of offenders in drunkennesse, such Constable, &c. shall forfeit ten shillings to the use of the poore, &c. and to be levied as aforesaid, 4. Ia. 5.

If a common Inne-holder, or Alehouse-keeper will not lodge a Traveller, any Constable (or Iustice of Peace) may compell him thereto; but how the Officer shall compell him, *quere*: it seemeth that all the Officer can doe, is either to cause such Alehouse-keeper to be suppressed; or else to present or preferre such offence of an Inne-keeper, or Alehouse-keeper, at the Assises, or Sessions of the Peace, that so such offender may be thereupon indicted. See the Commission. Br Acc. fur. 92. & 76. 5. E. 4. 3.

And at Lent Assises, *Anno Domini* 1622. Sir *Iames Ley* (Knight and Baronet, Lord Chiefe Iustice of the Kings Bench) delivered it in his charge, That an Inne-keeper offending herein, might be indicted, fined, and imprisoned for the same, but cesse, that the party grieved might have his action, *sur le Case*, against the Inne-keeper, or Alehouse-keeper refusing to lodge him. *Vide Cro.* 50. *C.* 2. *H.* 99.

But no Inne-holder, Alehouse-keeper, or other Victualler shall be compelled to sell, or let any Traveller or other, to have any victuals or lodging, except the party shall first tender and pay ready money for the same, if it be required, 10. *H.* 7. 8. *Y.* 8. *E.* 4. 3. *Co.* 98. b.

Two Iust. etc

Any two Iustices of Peace (the one being of the *Quorum*) may allow 5. E. 6. 25. P. 1.

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the keeping of any common Alehouſe, or Tiplinghouſe; and ſhall (from time to time) take Bond with ſuretie by Recogniſance of ſuch Alehouſe-keepers, as well againſt the uſing of unlawfull games, as alſo for the keeping of good rule and order in their houſes, according to the diſcretions of the ſame Iuſtices.

There ſhall be paid for ſuch Recogniſance but twelve pence. And the ſaid Iuſtices ſhall certifie the ſame Recogniſance at their next quarter Seſſions (upon paine of five Marks *ibidem.*)

5.E.6.23.P.1. Any two Iuſtices of Peace (the one being of the *Quorum*) may remove, diſcharge, and put downe any Alehouſe where they ſhall thinke meet.

The Alehouſe-keeper put downe and diſcharged, by any two ſuch Iuſtices of Peace, cannot be allowed againe by any other two, or moe Iuſtices of Peace, except it be in open Seſſions, (as Sir *Peter Warberton* delivered in his charge at Cambridge Aſſiſes *Anno Dom.* 1613.)

P.4. 5.E.6.c.25. Any two Iuſtices of Peace (the one being of the *Quorum*) may commit to priſon in the common Gaole (for three dayes without baile) thoſe that keepe common Alehouſes, or that uſe common ſelling of Ale or Beere, obſtinately of their owne authority, without allowance by two ſuch Iuſtices; or contrary to the commandement of two ſuch Iuſtices. And the ſaid two ſuch Iuſtices (before the delivery of ſuch Offenders) ſhall take Recogniſance of them, with two ſureties, that he or they ſhall keepe no more a common Alehouſe, or uſe commonly ſelling of Ale or Beere, according to the diſcretion of the ſame Iuſtices; and ſhall certifie ſuch Recogniſance, diſcharge, and offence, at their next Quarter Seſſions: which certificate ſhall bee a ſufficient conviction in Law of the ſame offence, without any further triall thereof to be had: And for ſuch offence the fine of xx.s. ſhall be aſſeſſed in open Seſſions.

But for that this former Law made, 5 *Ed.*6. hath not wrought ſuch reformation as was intended, it is further enacted by another ſtatute made 3. *Caroli Regis cap.*3. That if any perſon ſhall upon his owne authoritie (not being thereunto lawfully licenced) take upon him, or her, to keepe a common Alehouſe, or Tipling houſe, or ſhall commonly uſe ſelling of Ale, Beere, Cyder, or Perry, that every ſuch perſon for every ſuch offence, ſhall forfeit twenty ſhillings to the uſe of the poore of the Pariſh where ſuch offence ſhall be committed: The ſame offence being viewed by any 1.Iuſtice. Iuſtice of Peace (Major, or other head Officer of any City or Towne corporate) within their limits, or confeſſed by the offender, or proved by the oath of two witneſſes.

Every ſuch Iuſtice of Peace, or other head Officer aforeſaid, have power to miniſter an oath to ſuch Witneſſes, 3. *Car.*3.

Alſo every ſuch Iuſtice (and other head Officer aforeſaid) within their ſeverall Limits may make their Warrant to the Conſtables or Churchwardens of the Pariſh where the ſaid offence ſhall be committed, to levie the ſame twenty ſhillings, by diſtreſſe of the offenders goods; and for default of ſatisfaction, within three dayes next enſuing the ſaid diſtreſſe, to be appreiſed and ſold; and the overplus to be delivered to the offender: 1.Offen. and this to be onely for the firſt offence, *ibidem.*

If ſuch offender ſhall not haue ſufficient goods whereby to levy the ſaid twenty ſhillings by diſtreſſe, or ſhall not pay the ſaid twenty ſhillings within ſix dayes after ſuch conviction, then the ſaid Iuſtice (and other head Officer aforeſaid) ſhall commit the ſaid offender to the Conſtable where the offence ſhall be committed, or the party apprehended, to be openly whipped, *ibidem.*

If the Conſtable, &c. ſhall neglect to execute the ſaid Warrant, or do refuſe, or doe not execute upon the offender the ſaid puniſhment of whipping, the ſaid Iuſtice (or Officer) may commit the Conſtable, &c. to the common Gaole without baile, untill the ſaid offender ſhall be by him puniſhed as aforeſaid, or untill the ſaid Conſtable, &c. ſhall pay forty ſhillings to the uſe of the poore of the Pariſh, *ibidem.*

The unlicenced Alehouſe-keeper, for ſuch his ſecond offence, ſhall be committed to the houſe of correction for one moneth, *ibidem.* 2. Offen.

And for every ſuch offence after, he ſhall be committed to the houſe of correction, there to remayne untill he be delivered by order from the generall Seſſions, *ibidem.* 3. Offen.

Provided, that ſuch offenders ſhall not be puniſhed twice for the ſame offence, *ſc.* ſhall not be puniſhed both by the Statute made, *An.* 5. *Ed.* 6. and by this Statute of 3 *Caroli Regis.*

If a feme Covert, againſt the will of her Husband, ſhall keepe an Alehouſe, or ſhall uſe common ſelling of Ale or Beere, without licence, &c. the husband is puniſhable therefore: And the Wife alſo (by the diſcretion of the Iuſtices of Peace) may be impriſoned for ſuch her perſonall and wilfull offence, untill ſhe ſhall find ſureties for her good behaviour, and that ſhe ſhall no more uſe the ſame. 5. E. 6. P. 1. 4.

Alſo it ſeemeth (by the letter of the Statute) that the Alehouſe-keeper put downe or diſcharged by two ſuch Iuſtices, if (contrary to their commandement) he ſhall uſe common ſelling of Beere or Ale againe, though allowed by two other Iuſtices of Peace, out of the generall Seſſions, yet the two Iuſtices that firſt diſcharged him, may put him downe againe, and may commit him to the Gaole for ſelling contrary to their commandement.

And yet the Statute alloweth common victualling, and ſelling of Ale or Beere in Faires, though unlicenced, *&c.* 3 *Caroli* 3. 5. E. 6. P. 5.

If an Alehouſe-keeper which is not licenced, ſhall ſuffer Townesmen, or any other perſon, to tipple in his houſe; or ſhall breake the Aſſiſe, &c. he is puniſhable for the ſame, by the Statute made, *primo Ia. Reg. c.* 9. and beſides he may alſo be puniſhed by force of the ſaid Statute, made 5 *Ed.* 6. *cap* 25. or 3 *Caroli* 3. for ſelling Beere, &c. without licence. Alſo if any Townesman, or other perſon, ſhall be found to be tipling in any unlicenced Alehouſe, ſuch perſons (as it ſeemeth) are alſo puniſhable by the ſame ſtatute, made *primo Iacobi Regis cap.* 9.

Any two Iuſtices of Peace may give allowance to Labourers, &c. for urgent and neceſſary occaſions, to remaine, in an Inne, Alehouſe, or Victualling houſe. P. C. 1. Iac. 9.

Common Innes are appointed for Trauellers and Wayfaring men, *Co.* 3. 32. and therefore if any Inne-keeper, ſhall ſuffer perſons inhabiting in Co. 3. 32.

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the ſame Towne, or any other perſons (contrary to the Statutes) to bee (uſually) tipling in his houſe, ſuch an Inne-keeper may be accounted as well an Alehouſe-keeper, as an Inne-keeper; and ſuch Inne-keepers may be bound by Recogniſance with Sureties for the keeping of good order, as Alehouſe-keepers are; and ſo Judge *Warberton* delivered it in his charge at Cambridge Aſſiſes, *Anno Dom.* 1613. And therewith alſo agreed Sir *Iames Ley*, and Sir *Iohn Dodderidge*, in their ſeverall charges at Cambridge Aſſiſes, *Anno Dom.* 1621. for that ſuch Inne-keepers (ſaid they) doe pervert the end for which they were firſt appointed. Or elſe it ſeemeth they may be dealt withall, *ſc.* puniſhed; or committed as Alehouſe-keepers without licence, (by two Juſtices of Peace, as aforeſaid:) Or they may be indited therefore at the Aſſiſes, or Seſſions of Peace, by the Commiſſion of the Peace.

Cromp. 77. Alſo it hath beene agreed for Law, That ſuch Innes as have beene erected ſince the Statute of 5. *Ed. 6. cap.* 25. and were not Innes before, ought to haue licence; and that ſuch Inne-keepers are to be bound by Recognizance, with Sureties, for keeping of good orders, as Alehouſe-keepers are.

And yet at Lent Aſſiſes *Anno Dom.* 1621. Sir *Iames Ley* delivered in his charge, that Innes were Hoſteries, by the common Law, and that every man might erect and keepe an Inne or an Hoſterie, ſo as they were *probi homines*, men of good converſation, fame, and report, and dwelling in meet places: but yet that they were not worthy of any allowance or licence under the Kings great Seale, &c.

And he delivered further in his ſaid charge, That if ſuch Innes or Hoſteries be uſed, *ad nocumentum populi Domini Regis, &c. ſc.* doe keepe any diſorderly houſe contrary to the Law; or bee moe in number than are needfull, and to the hinderance of other ancient & well governed Innes; that then they may be thereof indicted at the Aſſiſes, or Seſſions of the Peace; and there may be either fined, or ſuppreſſed. And Sir *Iames Ley* told me after (at his lodging in Trinity Colledge) that this was the opinion of all the other Judges, upon late conference had among themſelves.

But ſuch Innes or Hoſteries, if they ſhall be inconvenient or diſordered, in reſpect either of the Inne-keeper, or of the reſort thither, or that the place be unmeet, they are to be ſuppreſſed upon an Indictment found at the Aſſiſes, or Seſſions.

And if they ſhall ſuffer Townesmen, or other perſons (uſually) to tipple there, they are to be puniſhed as Alehouſe-keepers without licence: for theſe Innes or Hoſteries are to be allowed onely for Travellers.

Anno 1616. His Majeſty, in his late Speech in the Starre-chamber, hath juſtly excepted againſt the abundance of Alehouſes, and more ſpecially againſt the infamous and blinde Alehouſes, as being haunts and receits for Robbers, Theeves, Rogues, Vagabonds, and other idle, looſe, and ſturdie fellowes; and therefore here I thought good to put the Iuſtices of Peace in minde, that in allowing of Alehouſes, they have regard, as well to the perſon, as the place: for all perſons are not fit to bee allowed for Alehouſe-keepers; neither are all places meet for an Alehouſe.

As

The perſon. As if the party be in Livery, or a Retainer to any man, Bayliffe of a Hundred or Libertie, Conſtable, &c. or be one that is not of good fame, converſation, or government; ſuch perſons are not fit to be allowed to be Alehouſe-keepers. See *Fitz. N.B.* 172. That no Victualler ought to ſell victuals, ſo long as he is in office, &c. Stat 12. *Ed. 2. cap. 6.*

Againe, *Dicitur*, that no perſon uſing any trade, ought to be allowed to keepe an Alehouſe, for that were to take away the meanes, and ſo the life of another; *Tamen quære inde*, for that by the common Law no man is prohibited to uſe diuers Trades, *Vide hic tit. Labourers.*

Alſo there are ſome perſons, that by Law are diſabled to keepe an Alehouſe, (at leaſt for a certaine time:) as,

1 The Alehouſe-keeper convicted (according to the ſtatute *viceſimo primo Iac. 7.*) for ſuffering Townesmen, &c. (or any other perſon as it ſeemeth) to continue drinking in his houſe, contrary to the ſaid ſtatute, (which ſee here before) ſuch Alehouſe-keeper is diſabled to keepe any Alehouſe for three yeares after ſuch conviction, 21. *Iac. cap. 7.* 7. Ia. 10. 21. Ia 7.

2 So the Alehouſe-keeper convicted (as aforeſaid) for not ſelling one full quart of their beſt Beere or Ale for one peny, and of the ſmall, two quarts for one peny (which ſee in this title a little before) ſuch Alehouſe-keeper alſo is diſabled (for three yeares after) to keepe an Alehouſe. 21. *Iac. cap. 7.* 7. Ia. 10.

3 The Alehouſe-keeper that ſhall continue drinking in another Alehouſe or Inne, in the ſame Towne where he dwelleth (the ſaid offence being ſeene by any Juſtice of Peace within his limits, or being prooved before any Iuſtice of Peace by two witneſſes upon oath) every ſuch Alehouſe-keeper alſo is diſabled for three yeeres after ſuch conviction, to keepe any Ale-houſe. 4. Ia. 5. 7. Ia. 10. 21. Ia 7.

4 So the Alehouſe-keeper that ſhall be drunken, and thereof lawfully convicted (by indictment at the Aſſiſes, Seſſions of Peace, or in a Leet, or otherwiſe before the Iuſtice of Peace) is diſabled for three yeares to keep an Alehouſe. 4. Ia. c. 7 Ia 10. 21. Ia 7.

An Alehouſe-keeper convicted and ſuppreſſed for any of the former offences, if he ſhall be licenſed or allowed againe by two or moe Iuſtices of Peace within three yeares, ſuch Licenſe is void, and he is to be puniſhed as one victualling without licence. And ſo it was delivered by Sir *Nicholas Hyde*, at Cambridge Aſſiſes, *Anno* 3. *Caroli Regis*. And ſo it ſeemeth if hee were convicted, though hee were not ſuppreſſed, if hee be after licenced againe within three yeares after ſuch conviction, ſuch Licence is void, &c.

5 The Alehouſe-keeper that is diſcharged or put downe by any two Iuſtices of Peace, the one being of the *Quorum* &c. is alſo diſabled, ſo as he cannot be allowed againe, except in open Seſſions. See *hic antea.*

Alſo in Townes which are no thorow-fare, the Iuſtices ſhall doe well to be ſparing in allowing of any Alehouſe, (except it be at the ſuit of the chiefe inhabitants there, and to ſupply the neceſſary wants of their poore:) And then Kanikets (onely to ſell to the poore, and out of their doores) would ſuffice, if they were enabled by a Law.

The place. Alſo the Alehouſes to be allowed, are meeteſt to be about the middeſt of

of the Towne; but not to bee in any blinde corners, where Theeves and Rogues may be harboured in, or in places out of, or distant from the Towne, except upon the Riuers side, and where there is great accesse

Affray. Cap. 8.

An Affray, is derived of the French word *Effrayer*, which signifieth to terrifie, or bring in fear; and what the Law understandeth to be a common wrong; and therefore I will shew you what every man may doe in such cases.

Every private man being present before, or in and during the time of an affray, ought to stay the Affrayors, and to part them, and to put the offender, but may not hurt them, if they resist him, neither may he imprison them, for that he is but a private man. *Every private man.*

An Affray being in the street, if any other shall come with harnesse or weapon, to joyne with either party, every person present, or that seeth it, may stay them till the Affray be over.

Lamb. 134. Also every private man (being present) may stay the Affrayors untill their heate be over, and then may deliver them to the Constable, to imprison them till they find suretie for the Peace. And upon their information it seemeth the Constable may imprison the parties, though the affray were not in the Constables presence, *hic cap. 1.*

3. H. 6. fol. 1. Br. Coron. 225. 10. H. 7. 10. If any person be dangerously hurt in an Affray (or otherwise) every person may arrest the offender, and carry him to the Gaole, or to a Justice of Peace (who is either to baile him untill the next Gaole delivery, or to commit him to the Gaole, untill it be knowne whether the party hurt, will live or die thereon.) *Br. Faux imprif. 35. 44.*

The Constable in such cases is armed with a more large authority, within his jurisdiction, for hee may and ought in the Kings name to command the Affrayors, or such as are about to make an affray, to avoid or surcease, and to depart (upon paine of imprisonment:) and if the Constable (being present at an Affray) doth not his best endevour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be deeply fined for it. *The Constable.*

But where the Affray is made out of the presence or sight of the Constable, and one commeth to the Constable and telleth him of it, and wisheth him to goe, and see the Peace kept, and the Constable doth nothing, but neglecteth his duty therein, in soemuch hee shall not be fined by the Justices at their Sessions, upon presentment thereof by the great Enquest. *Cromp. 146. quære tamen, & vide hic, cap. 3. the Commission, & 121. the forme of the Constables Oath.*

5. H. 7. 10. Lamb. 135. If the Affrayors will not depart, but shall draw weapon, or give any blow, the Constable may command assistance of others for the pacifying of the Affray, and may justifie the hurting of them if they make resistance.

Lamb. 135. The Constable may in the Kings name make proclamation, (if the Affray be great or dangerous) that the Affrayors shall keepe the Kings Peace and depart, &c.

Also

Also if the affray be great and dangerous, then the Constables may command the Affrayors to prison for a small time, till their heat be over; yea, they may imprison the affrayors till they find sureties for the Peace. And if any of the parties hath received any dangerous hurt in the affray, the constable ought to arrest and carry the offender to the Gaole, (or to a Iustice of Peace) to the end he may find sureties to appeare at the next Gaole delivery: and the Constable may iustifie the bearing, &c. of such an offender, if he will not obey the arrest, but make resistance, or flyeth. Lamb. 136. 38. H. 3. t. 8. 11. Br. Faux imp. 6.

Note, that it is properly no affray, unlesse there be some weapons drawne, or some stroke given, or offered to be given, or other attempt to such purpose: for if men shall contend onely in hot words, this is no affray, neither may the Constable for words onely lay hands upon them unlesse they shall threaten to kill, beat, or hurt one another, and then may the Constable arrest such persons (to goe before some Iustice of Peace, to find sureties for the keeping of the Peace) and yet such threatning is no affray. Hic cap. 2.

If the affray be in an house, and the doores shut, the Constable may breake into the house to see the Peace kept, though none of the parties have taken any hurt.

If the affrayors flie into another mans house, the Constable (in fresh suit) may breake into the house, and apprehend the affrayors, 7. *Ed.* 3. 19.

If the affrayors flie into another County, the Constable (or Iustice of Peace) seeing this, may in fresh suit pursue, or cause them to be pursued, and to be taken there; but they can then meddle no further, but (as every private person may doe) to carry them before some Iustice of Peace of the County where they are taken, to cause them to finde surety for the Peace. Pla. 39. 2. Cromp 146. b. & 172. b.

But if the Affrayors flie into a Franchise within the same Countie, the Constable (or Iustice of Peace) seeing this, may in fresh suit pursue and take them out of such Franchise. Cromp. 146.

After the affray (it seemeth) the Constable, without a Warrant, cannot arrest the affrayors, except some person be in perill of death by some hurt there received. 38. H. 8. Br. F. imp. 6.

The Iustice. Every Iustice of Peace may doe that, which everie Constable or private man may doe by the common Law herein.

Besides, every Iustice of Peace (within his limits) may presently after the affray commit the offenders, untill they have found surety for the peace, if the affray were in his presence. And if the affray were not in his presence, yet upon complaint, or upon his owne discretion, hee may after make his warrant to take or commit such offenders, until they have found suretie for the peace, *Vide tit. Peace, & Suretie for the Peace.* 2. Ed. 4. 3. Cromp. 195. 196.

If an affray be made in the presence of a Iustice of Peace, hee may lay hands upon, and arrest the offenders to find sureties for the peace, and may take away their weapons, 21. *H.* 7. 22. *b. Moore.* Br. Faux imp 12. & 33.

And yet by some opinions, the Iustice of Peace in cases of an affray to some purposes hath no further authoritie than everie private man hath: for though the Iustices of Peace (sitting in their Sessions, or out of their Sessions) may command a man to be attached, who shall make an affray in

in their preſence (and of ſuch things done in their preſence, they may make a Record, and certifie the ſame, which ſhall be a conviction of the offender) and the Iuſtice of Peace may preſently upon the fact command or ſend ſuch offenders to the Gaole: yet the Iuſtices cannot themſelves attach or arreſt any man, ſay they, for any affray, or other thing done in their preſence, no more than a ſtranger or private perſon may doe; but after the affray they may make or grant out their Warrant to attach or arreſt the offenders, and may then commit them to the Gaole, except they ſhall find ſureties for the Peace.

Every Iuſtice of Peace (in his owne diſcretion, and *ex officio*) may binde all ſuch to the Peace, as in his preſence ſhall ſtrike another, or ſhall threaten to hurt another, or ſhall contend onely in hot words, *Vide tit. Sureties for the Peace hic cap. 67.*

P. Iuſt. P. 173 10. H. 7. 20. Cromp. 154. If any perſon be dangerouſly hurt in any affray (or otherwiſe) every Iuſtice of Peace within the yeere and day after ſuch hurt, may commit to the Gaole ſuch offenders, there to remaine untill the day and yeare be expired; or that the ſaid offenders ſhall finde ſureties to appeare at the next generall Gaole delivery, to anſwer to the felony, if the party hurt happen to die within the yeare after the hurt. *Vide* Stat. 3. *H.* 7. *cap.* 1. *& Exodus cap.* 21. 18, 19. If the party happen to recover, the offender ſhall pay to the party hurt, for loſing his time, and alſo for his healing, *ibidem.*

But where the hurt ſhall be dangerous, or wound mortall, although the Iuſtice may baile the offender, living the party ſo hurt, yet it ſhall bee better diſcretion for the Iuſtice to commit the offender to the Gaole, there to remaine untill there ſhall appeare ſome good hope of recovery in the other: And ſo Sir *Nickolas Hyde* adviſed at Cambridge Lent Aſſiſes, *Anno* 5. *Caroli Regis.*

5. H. 7. 6. Br. Faux imp. 41. If an affray or aſſault ſhall be made upon a Iuſtice of Peace or Conſtable, they may not onely defend themſelves, but may alſo apprehend and commit the offenders, untill they have found ſureties for the Peace: the Iuſtice of Peace may preſently cauſe them to be arreſted, and carried before another Iuſtice, who may ſend them to the Gaole; and the Conſtable muſt commit them to the Stocks for the preſent, and after carry them before a Iuſtice of Peace, or to the Gaole. *Vide hic poſtea c.* 67. *&* 120.

Armour. CAP. 9.

2. E. 3. cap. 3. P. 1. 7. R. 2 13. 20. R. 2 cap. 1 IF any perſon ſhall ride or goe armed, offenſively before the Kings Iuſtices, or any other the Kings Officers or Miniſters doing their Office, or in Faires, Markets, or elſewhere (by night or by day) in affray of the Kings people (the Sheriffe, and other the Kings Officers, and) every Iuſtice of Peace (upon his owne view, or upon complaint thereof,) may cauſe them to bee ſtayed and arreſted, and may binde all ſuch to the Peace or good behaviour, (or, for want of ſureties, may commit them to the Gaole:) and the ſaid Iuſtice of Peace (as alſo every Conſtable) may ſeize and take away their armour, and other weapons, and ſhall cauſe them to be preiſed, and anſwered to the King as forfeited: and this the Iuſtice *Oneluſ.*

of

of Peace may doe by the firſt *Aſſignavimus* in the Commiſſion. See hereof *antea.* Lamberts office of a Conſt. 13.

So of ſuch as ſhall carry any Gunnes, Dags, or Piſtols that be charged; or that ſhall goe apparelled with privie Coats or Doublets, the Iuſtice may cauſe them to find ſureties for the Peace, and may take away ſuch weapons, &c. *Vide tit. Suretie for the Peace.*

And yet the Kings ſervants in his preſence; and Sheriffes and their Officers, and other the Kings Miniſters, and ſuch as be in their company aſſiſting them: in executing the Kings Proceſſe, or otherwiſe in executing of their Office; and all others in purſuing Hue and Cry, where any felony, or other offences againſt the Peace, be done, may lawfully beare armour or weapons. 2.E.3.c.3. Co.5.72.

Alſo (it ſeemeth) that any Iuſtice of Peace may command that weapons be taken from ſuch priſoners, as at any time ſhall be brought before him.

Alſo if any ſervant to husbandry, or to any Artificer, or Victualler, or any Labourer, ſhall beare any Buckler, Sword, or Dagger, (except they be travelling with their maſter, or in their maſters meſſage) it ſeemeth every Iuſtice of Peace may impriſon them till they have found ſureties for the Peace, and may ſeize and take away their ſaid weapons; (or may cauſe the Conſtable to ſeize the ſame, as forfeit) and to preſent the ſaid weapons at the next Seſſions of the Peace. But this ſtatute ſeemeth now to be repealed by the Statute made 21. *Ia.* 28. 12.R.2.8.

Barrettor. CAP. 10.

EVery Iuſtice of Peace (upon his diſcretion) may bind to the Peace, or good behaviour, ſuch as are common Barrettors. 2.R.3.5. Lamb.77.

Now a common Barrettor is he, who is either a common mover and ſtirrer up (or maintainer) of ſuits in Law in any Court; or elſe of quarrels or parts in the country, *Co.L.*368. Co.8.36.

In Courts. As if in any Court of Record, County-court, Hundred, or other inferiour Courts; any perſon, by fraud and malice under colour of Law, ſhall themſelves maintaine (or ſtirre up others unto) multiplicitie of unjuſt and feined ſuits, or informations, (upon penall Lawes) or ſhall maliciouſly purchaſe a ſpeciall *Supplicavit* of the Peace, to force the other party to yeeld him compoſition; all ſuch are Barrettors.

In the countrey. In the County; and theſe are of three ſorts:

1 Diſturbers of the Peace, *viz.* ſuch as are either common quarrellers or fighters in their owne cauſe; or common moovers or maintainers of quarrels and affrayes betweene others.

2 Common takers or detainers (by force, or ſubtiltie) of the poſſeſſions of houſes, lands, or goods which have beene in queſtion or controverſie.

3 Inventers and ſowers of falſe reports, whereby diſcord ariſeth, or may ariſe betweene neighbours; all theſe are Barrettors. Co.8.36.

Yea, if one be *Communis ſeminator litium*, he is a Barrettor.

Or if any man of himſelfe, be *Communis oppreſſor vicinorum*, (a common

mon oppressor of, or wrangler with, his neighbours) either by unjust, or wrangling Suits, or other oppressions, or deceipts, he is a Barrettor.

Or if one be *Communis pacis perturbator, Calumniator, & Malefactor* hee is a Barrettor. *Cromp.* 237.

Co. 8. 37. But all such persons must be Common Barrettors, *i.* not in one or two, but in many causes.

Bastardie. CAP. 11.

Lamb. 132. Cromp. 196 EVery Justice of peace, upon his discretion, may binde to the good behaviour, him that is charged, or suspected to have begotten a Bastard child, to the end that hee may bee forth comming when the childe shall be borne; otherwise there will bee no *Putative* father, when the two Justices (after the birth of the child) shall come to take order according to the Statute of 18. *El. c.* 3. The like may be done after the birth of the child, and before such order taken.

Also if the *Putative* father of any such childe either before the birth of the child or after, shall by any perswasion, procurement, or other practice, be convaied or sent away, or shall run away, so as the Justices of peace cannot come by him, or so as the order of the Justices by meanes thereof shall not be performed; it seemeth every Justice of peace, upon his discretion, may binde to the good behaviour, and so over to the next generall Goale delivery (before the Iudges of Assise) or to the next quarter Sessions, such as shall have any hand in such practice, &c. So of such as by practice, &c. shall cause the mother of the child to bee convaied or sent away, or to run away, whereby shee leaveth her childe to the charge of the Towne, &c. *vide hic. cap.* 108.

Two Iustices.

18 Eliz. c. 3. P. 2. Two Justices of peace (one being of the *Quorum*) in or next to the limits where the Parish Church is, in which Parish any Bastard child (begotten and borne out of lawfull matrimony) shall be borne, upon examination of the cause and circumstances, shall and may take order by their discretion, as well for the releefe of the Parish (in part, or in all) and keeping of the child, (by charging the mother or reputed father, with the payment of money weekely, or other releefe) as also for the punishment of the mother and reputed father, 21. *Iac. c.* 28. & 3. *Carol.* 4.

But such a Bastard child must bee one that is left to bee kept at the charge of the Parish; or one likely to bee, (or which may bee) chargeable to the Parish. See the Stat. of 18. *Eliz.* and the Stat. 7. *Iac. cap.* 4.

The (reputed) father, by the Law of God, was to give unto the maides father 50. *Shekels of silver*; and hee also was to take her to his wife. *Exod.* 22. 16. and *Deut.* 22. 28. 29. wherewith agreeth the *Canon.* 67. *Apostol: Quam quis violaverit virginem, ducat in uxorem.*

If the two Iustices cannot agree upon their order, what is then to bee done, see *hic antea cap.* 6. But by some opinions, the words of this Statute being (disjunctive) two Iustices of P. in or next to, the limits, &c. if the two Iustices of peace in that division or limits cannot agree, then the two Iustices of peace next to that division or limits, (being within the same County, and one of them of the *Quorum*) have power to take order therein. *quære inde.*

7. Iac. 5. Also it seemeth the mother may be examined upon oath, concerning

the reputed father, and of the time, and other circumſtances; for that in this caſe the matter and the triall thereof dependeth chiefly upon the examination and teſtimony of the mother. *Vide hic cap 60. & Lamb.* 317

By the Statute 7. *Iac.* it appeareth that the Juſtices of the peace ſhall now commit ſuch lewd women to the houſe of correction, there to bee puniſhed, &c. And therefore it ſeemeth that the Iuſtices of peace may not puniſh (by corporall puniſhment) the mother by force of this Statute of 18. *Eliz.* 3. and then to ſend them to the houſe of correction, for the rule of Law is *Nemo debet bis puniri pro uno delicto*, and the Diuine ſaith, *Deus non agit bis in idipſum, Co.* 4. 43. & 8. 118.

But ſuch corporall puniſhment or commitment to the houſe of correction, is not to bee untill after that the woman is delivered of her child, neither are the Iuſtices of peace to meddle with the woman untill that the child bee borne (and ſhee ſtrong againe) leſt the woman being weake, or the child wherewith ſhee is, happen to miſcarrie: for you ſhall finde that about 31. *Eliz.* a woman great with child, and ſuſpected for incontinencie, was commanded (by the Maſters of Bridewell in London) to be whipped there, by reaſon whereof ſhee travelled, and was delivered of her child before her time, &c. And for this the ſaid Maſters of Bridewell were in the Starre-Chamber fined to the Queene at a great ſumme, and were further ordered to pay a ſumme of money to the ſaid woman.

After ſuch order by two ſuch Iuſtices, ſubſcribed under their hands, if the ſaid mother, or reputed father, upon notice thereof ſhal not performe the ſaid order, then ſuch perſon ſo making default, ſhall bee committed to the Gaole, there to remaine without baile or mainpriſe, except ſuch parties ſhall put in ſufficient ſureties to performe the ſame order; or elſe perſonally to appeare at the next generall Seſſions of the peace, in that Countie, and to abide ſuch order as the Iuſtices of P. or the more part of them, then and there ſhall take in that behalfe, (if they ſhall take any) or in default thereof, then to abide and performe the order before made. 18. Eliz. 3. P. 1.

Nota que Enfant nee per xi dies poſt ultimum tempus legitimum mulieribus conſtitutum, (ſc. poſt 40. Semaines. apres mort ſon pere.) ne ſera adjudge legitimum puerum, &c. Cr L. 123. 2. *Eſdras* 4. 40. 41. *Et iſſint ſemble de Enfant nee apres* 40. *Semaines del temps que feme charger home daver Carnall Conuſance de luy, tiel Enfant ne ſerra adjudge ne repute deſtre le iſſue de tiel home.*

Every lewd woman which ſhall have a Baſtard, which may bee chargeable to the Pariſh, the Iuſtices of peace ſhall commit ſuch woman unto the houſe of correction, there to bee puniſhed and ſet on worke for one yeare: and if ſhee ſhall eftſoones offend againe, then to be committed to the houſe of correction, as aforeſaid; and there to remaine untill ſhee can put in good ſureties for her good behaviour, not to offend ſo againe. 7. Iac. 4.

Now it ſeemeth that ſuch commitment to the houſe of correction ought to be by two Iuſtices at the leaſt (by the words of this Statute) and then by the conference of theſe two Statutes (of 18. *Eliz.* and 7. *Iac.*) it ſeemeth fitteſt for the two next Iuſtices authoriſed by 18. *Eliz.*

It ſeemeth alſo (by the words of this Statute 7. *Iacobi*) that ſuch a woman ſhall not be ſent to the houſe of correction, untill after the child bee borne,

borne, and that it be living; for it muſt be ſuch a child as may be chargeable to the Pariſh.

Alſo it ſeemeth that ſuch a Baſtard child, is not to be ſent with the mother to the houſe of correction, but rather that the child ſhould remaine in the Towne where it was borne, (or ſettled with the mother) and there to be releeved by the worke of the mother, or by releife from the [b] reputed father: See to this purpoſe the Reſolution of the Iudges, *Reſol.* 5. in the title *Rogues*: and yet the common opinion and practice is otherwiſe, *&c.* to ſend the child, with the mother, to the houſe of correction; And this may alſo ſeeme reaſonable, where the child ſucketh on the mother. *vide plus, cap.* 6. *fine. & cap.* 40 *Reſol.* 7. *& Quære.*

[b] 18. Eliz. 3.

Baylement. CAP. 12.

Lamb. 15.

BY the common Law, the Sheriffe, and every Conſtable, (being conſervators of the Peace) might have bayled a ſuſpect of felonie: but this authoritie ſeemeth to bee taken from them, and given to the Iuſtices of Peace by the Statutes following.

Firſt by the Statute 1. *R.* 3. *cap.* 3. every Iuſtice of Peace had authority (by his diſcretion) to let to bayle perſons impriſoned for ſuſpition of felonie, &c.

But for as much as after the making of that Statute, divers not being bayleable, were notwithſtanding let to bayle, and ſo, many notable felons eſcaped, therefore this Statute was repealed by the ſtatute of 3. *H.* 7. And thereby any two Iuſtices of Peace (the one being of the *Quorum*) were enabled to let any priſoners (mainpernable by the Law) to bayle, to the next generall Seſſions of the Peace, or Gaole delivery, as the caſe ſhould require. After, for that one Iuſtice of Peace in the name of himſelfe, & of one other of his fellow Iuſtices (not making the other Iuſtice privie unto the cauſe wherefore the priſoner ſhould bee bayled) did oftentimes by ſiniſter meanes ſet at large great and notable offenders, ſuch as were not bayleable, and yet to hide their affection therein, did ſignifie the cauſe of their apprehenſion, to bee but only for ſuſpition of felony, whereby the ſaid offenders have eſcaped unpuniſhed; for reformation whereof, by the Statute 1. *& 2. P. & M.* it was enacted, That if it be for manſlaughter, or felony, or ſuſpition of manſlaughter or felony, then the ſame Iuſtices muſt bee preſent together, at the time of the ſaid bailement; and that they muſt certifie (in writing ſubſcribed with their owne hands) the ſaid bailement at the next generall Gaole delivery, to be holden within the County where the perſon ſhall be arreſted or ſuſpected, upon paine to bee fined by the Iuſtices of Gaole delivery.

3. H. 7. *cap.* 3. *Fitz. N. B.* 251. *Two Iuſtices.*

1. *& 2. P. & M. cap.* 3. *Inſt.* 107.

Now by the Preamble of both laſt recited Statutes, the miſchiefe ſeemeth to bee the eſcape of felons; and therfore if it be not in caſe of felony, it ſeemeth any one Iuſtice of Peace alone, may bayle a priſoner; (ſee the titles, *Affray*, *Dying*, and *Suretie for the Peace*:) except where ſome particular Statute ſhall otherwiſe preſcribe, as in *titulo Counterfeiters*. See more of Baylement, *hic poſtea cap.* 114. *One Iuſtice*

Bridges. CAP. 13.

Foure Iuſt. WHere a decayed Bridge is, and that it cannot be proved who, nor what lands be chargeable to the repairing therof, foure Iuſtices of Peace (whereof one to be of the *Quorum*) within the Shire, or Riding, wherein ſuch decayed Bridge beene (out of Cities, and Townes corporate; and if it be within a City or Towne corporate, then foure ſuch Iuſtices of Peace there) may within the limits of their ſeverall Commiſſions, call before them the Conſtables, or two of the moſt honeſt inhabitants of every Towne and Pariſh within the ſhire, Riding, Citie, or Towne corporate, wherin ſuch Bridge, or any parcell thereof ſhall happen to bee; and the ſaid Iuſtices (upon the appearance of ſuch Conſtables, or other inhabitants, and with their aſſents) may taxe every inhabitant in any ſuch City, Towne, or Pariſh (within their limits) to ſuch reaſonable ſumme of money, as by their diſcretions they ſhall thinke convenient, as well for the repairing of ſuch Bridge, as alſo for the making and repairing of any High wayes, lying next adjoyning to the end of any ſuch Bridge within this Realme, diſtant from either of the ends of the Bridge by the ſpace of three hundred foot. 22 H. 8. 5. P. 2. 7.

After ſuch taxation made, the ſaid Iuſtices of Peace ſhall cauſe the names and ſummes of every particular perſon, ſo by them taxed, to bee written in Roll indented. P. 2.

Alſo the ſaid Iuſtices ſhall make two Collectors of every Hundred, for the collecting of all ſuch ſummes of money, by the ſaid Iuſtices ſet and taxed; which Collectors receiving the one part of the ſaid Roll indented, under the ſeales of the ſaid Iuſtices, ſhal have power therby to collect all the particular ſummes of money therein contained, and to diſtraine ſuch as ſhall refuſe to pay the ſame, and to ſell ſuch diſtreſſe, delivering to the owner the overplus of the money, if there be any. P. 3.

Alſo the ſaid Iuſtices ſhall appoint two Surveyors, which ſhall ſee ſuch decayed Bridges, and wayes, repaired and amended from time to time, as often as need ſhall require; to whoſe hands the ſaid Collectors ſhall pay the ſaid ſummes of money by them received. P. 4.

The ſaid Collectors and Surveyors, and their executors and adminiſtrators, and every of them ſhall from time to time make a true account to the ſaid Iuſtices of Peace, of the receits, payments, and expences of the ſaid ſummes of money: And if any of them refuſe ſo to doe, then the ſaid Iuſtices of Peace from time to time (by their diſcretions) may make out Proceſſe againſt the ſaid Collectors and Surveyors, their executors and adminiſtrators by attachments, precept or warrant, under their ſeales, retornable at their generall Seſſions of the Peace. Ibid.

Alſo the ſaid foure Iuſtices of Peace may allow ſuch reaſonable coſts and charges to the ſaid Surveyors and Collectors, as by their diſcretions they ſhall thinke convenient. Ibid.

If any ſuch Bridge ſhal lie wholly in a City, or other corporate Town, the inhabitants of the Shire or Riding, ſhall not bee charged therewith, P. 5.

but

but ſuch Bridge ſhall bee made and repaired by the inhabitants of ſuch Citie or Towne corporate.

Ibid. If any ſuch Bridge bee without Citie or Towne corporate, the ſame ſhall bee made and repaired by the inhabitants of the Shire or Riding within which the ſame Bridge ſhall be.

Ibid. If part of any ſuch Bridge bee in one Shire, Riding, Citie, or corporate Towne, and part in another, then every of them ſhall bee charged to make and repaire ſuch part as ſhall lye and be within their limits, &c.

Mag. Chart. 15. Pat. Weare. But otherwiſe no Village or Freemen ſhall be compelled to make any Bridge, but ſuch as of old time, and by right they had wont to make, and that they and their Anceſtors haue uſed time out of minde, to make the ſame; or that they hold certaine lands to make the ſame: for though a man of his owne accord, hath made or mended a Bridge, yet ſhall hee not bee thereto conſtrained at another time; and yet if a man and his Anceſtors, or a Corporation, &c. haue time out of minde uſed to doe ſuch things, although they did it of their owne free minde and accord, and not of right, nor haue any land, by reaſon whereof they may be tied, yet ſuch continuance ſhall conclude them and their heires, or ſucceſſors. And ſo of High wayes, 21. *Ed.* 4. 46.

F. Grants. 94. 4. E. 3. 31. 21. E. 4. 46.

Where a man and his Anceſtors or Predeceſſors haue uſed time out of minde to repaire a Bridge, the King cannot acquitte or diſcharge them thereof. *Fitz. Grt.* 94.

Where it is preſented that *I. S. ratione tenuræ ſuæ*, hath uſed to repaire ſuch a Bridge, this implyeth a Preſcription, 21. *E.* 4. 38. *Cromp.* 186.

But a Preſentment that *I. S.* and his Anceſtors haue uſed to repaire ſuch a Bridge, this is no good preſcription to charge the heire (by the act of his Anceſtor) without ſome profit to be taken thereof, 27. *Aſſ.* 8. *Cromp.* 187. See the next caſe but one.

Otherwiſe it is of a corporation, ſpirituall or temporall, they by reaſon of uſage time out of minde, &c. may bee charged at this day, to repaire a Bridge, although they haue no land by reaſon whereof to be charged, for that ſuch a body never dieth. *Ibid.*

Alſo where a man hath once repaired a Bridge, and that afterwards the ſame was not repaired within the memorie of man, by ſome opinions, he or they which haue his eſtate in land, ſhall be bound to repaire the Bridge; for that it ſhall be ſuppoſed to haue beene done at the firſt, by reaſon or cauſe of his Tenancies (except ſome other particular cauſe of the doing thereof, ſhall be proued. But where the cauſe ſhall appeare, there *Ceſſante cauſa, ceſſabit effectus.*

P. Bridges 1. He that hath his land adjoyning to ſuch Bridge, is not chargeable to make or repaire the Bridge, except where they haue made it by Preſcription, 8. *H.* 7. *fol.* 5. *b.*

Cromp. 186. b. & 187. b. 37. Aſſ. pl. 10. per Greene. By common right Bridges ſhall bee amended by the whole Countie, for that it is for their common good and eaſe; and yet if any haue fiſhing, or other profit in that river, they in reaſon and law (as it ſeemeth) are chargeable; and therefore the Iuſtice of peace in good diſcretion may tax ſuch, proportionably to their profit.

Where men are charged by their tenure or lands, every owner or occupier of ſuch lands are to be charged proportionably to their ſaid lands. *Vide tit. Sewers, & Fitz.* 235 *b.*

Such as are chargeable to repaire a Bridge, may enter upon any other mans lands or ſoile adjoyning, and may lay their ſtone, lime, timber, or other things neceſſary for the repairing and amending thereof, and the owner of the lands ſhall have no action therefore, for it is for the common profit, &c. 43. *Aſſ.* 37. *Fitz. Aſſiſe* 353. Co. 11. 32.

Yea, where one is chargeable to repaire a Bridge, hee muſt alſo maintaine the way at each end thereof, (though the ſoile bee to another;) and if the ends bee broken by the water-courſe, hee muſt follow the water-courſe, and repaire the way, &c. *Cromp.* 186. *b.*

If a man maketh a Bridge for eaſement to his Mill, and that decayeth, the party, not any other ſhall bee to repaire this, for it is no common paſſage. *Fitz. Barr.* 276. Cromp. 187

Cloth. CAP. 14.

One Iuſtice EVery Juſtice of Peace may enter in and upon any houſes, lands, or grounds, and make ſearch for any teinters, wrinches, or other engines whatſoever, whereby any deceit may be uſed in or about the ſtretching of any wollen cloth; & may utterly deface the ſame teinters, &c. and for the ſecond offence may ſell them away to the beſt value thereof. But the diſpoſing of ſuch money ſhall be by two Iuſtices. See *hic poſtea.* 39. Eliz. 20. 43. Eliz. 10. P. Drapery. 112, 127.

And if upon information made to any Iuſtice of peace, of any ſuch teinters, &c. hee ſhall not make ſearch and execute this Law within ſeven dayes, he ſhall forfeit for every ſuch default, five pound.

Alſo one or two of the Iuſtices of peace of the Shire next adjoyning to any City, Borough, or Towne corporate within England, may joyne with them of ſuch City, Borough, or Towne corporate, in appointing the yearly Overſeers for ſuch clothes, &c. *ibidem.* P. Drapery. 113, 127.

Two Iuſtices. Any two Iuſtices of the Peace, within their limits, may once every yeare appoint Overſeers or Searchers (for that whole yeare following or for a ſhorter time, at their diſcretions) of any wollen cloth, to bee made or ſold in any Towne not being corporate, and may charge them upon their oathes, and binde them in Recogniſance of forty pound a peece, to doe their beſt endevours by all lawfull wayes and meanes, for their time, to ſee the ſtatute of 3. *E.* 6. *cap.* 2. and of 39. *Eliz. cap.* 20. in all points truely obſerved, and kept within their limits (*ſc.* within the Towne or Pariſh where the ſaid Overſeers ſhall be dwelling;) the particulars ſeeme to be theſe: 1. Rol. 2. 39 Eliz. 20. 43. Eliz. 20. P. Drapery. 65, 113, 118.

1 That the weights, lengths, and bredths of all wollen cloathes, bee according to the Statutes, 39. *Eliz.* See the Statute 4. *Iac. cap.* 2. & 21. *Iac. cap.* 18. P. Dra. 114.

2 That every ſuch cloth have a ſeale of lead, containing the juſt length and weight, 39. *Eliz.*

3 That ſuch cloth be not ſtretched or ſtrained, 39. *Eliz.*

4 Where

4 Where there bee any Teinters, Wrinches, or other ſuch engine, for the ſtretching of cloth, 34. *Eliz.*

5 That no iron cards or pickards be occupied in any wollen clothes, 3 *Ed.* 6. 2.

6 That clothes or woolls be not falſely dyed or coloured, 3. *E.* 6.

7 That no haire, flocks, thrums, yarne made of lambs wooll, chalke, flower, or ſtarch, or other deceiveable thing, bee put in or upon any wollen cloth. See 3. *Ed.* 6. & 43. *Eliz. cap.* 10. & 4. *Iac. cap.* 2. & 21. *Iac. Regis cap.* 18.

8 That no clothes be in any deceiveable manner preſſed, to bee put to ſale, 3. *Ed.* 6. See alſo the Statute of 5. *Ed.* 6. *cap.* 6. & 21. *Iac. cap.* 18.

Any two (or moe) Iuſtices of Peace within the County, City, Borough, or Towne corporate where deceiveable cloth ſhall bee made, or
21 Iac. 18. ſuſpected to be made (upon complaint or information of any Overſeer, Searcher, or any other, of any ſuch offence) may grant their Warrant to call before them any perſon or perſons, that in their diſcretion ſhall bee thought fit to diſcover any ſuch offence, And may examine upon oath any ſuch perſons for the triall and better finding out of the ſaid offence. And if upon ſuch examination it ſhall bee found by teſtimony of two witneſſes (or moe,) or by the confeſſion of the offender, that any ſuch offence hath beene committed, the ſame ſhall bee a ſufficient conviction of the offence; and then the ſaid Iuſtices ſhall or may certifie ſuch offence unto the Church-wardens, and Overſeers (for the time being) of the poore of the Pariſh, where ſuch deceiveable cloth ſhall bee made, under the hands and ſeales of the ſaid Iuſtices: And upon ſuch certificate, and a warrant made by the ſaid Iuſtices, to the ſaid Overſeers and Church-wardens for the levying of the forfeiture, The ſaid Overſeers and Church-wardens, or any of them, or their or any of their ſucceſſors, immediately from and after ſuch certificate and warrant delivered to them or any of them, may levie the ſumme or ſummes of money, which by the ſaid certificate and warrant ſhall appeare to bee forfeited, by way of diſtreſſe and ſale of the offenders goods, rendring to the offender the overplus, &c. And in defect of ſuch diſtreſſe, the ſaid two Iuſtices may commit the offender to the common Gaole, there to remaine without baile, untill payment ſhall bee made of the ſummes ſo forfeited to the ſaid Overſeers, and Church-wardens, or ſome or one of them, &c. 21. *Iac.* 18.

Theſe Overſeers, or two of them, ſhall (or may) from time to time, or *The Overſeers duty.* once every moneth at leaſt, goe into all or any houſes, ſhops, or other roomes of any Clothier, Draper, Cloth-worker, or other perſon where ſuch Cloth ſhall be, or ſhall bee ſuſpected to bee, and there to make due ſearch and triall, &c. Stat. 39 *Eliz. cap.* 20. & 21 *Iac. Regis cap.* 18.

1124. 39. Eliz. Alſo the ſame Overſeers ſhall fix unto every Cloth (by them viewed) a ſeale of Lead, containing the length and the weight of every ſuch cloth, together with this word, Searched, or Faulty, if there be cauſe. 21. *Iac.* 18.

And every Overſeer of cloth, appointed by any former law, (now in force) to fix unto any kinde of cloth a ſeale of Lead, ſhall ingrave or ſet

ſet upon every their ſeales of Lead (which they ſhall fix unto any cloth by them to be ſealed) his Chriſten and Sirname: And no cloth to bee ſealed with any ſeale of Lead which ſhall want ſuch ingraving or print, ſhall be allowed to be ſufficiently ſealed, 21. *Iac. Regis. cap.* 18.

Alſo the ſaid Overſeers ſhall ſeiſe and carrie away as forfeit, all ſuch cloth, as upon their ſearch they ſhall finde not to bee ſealed with a ſeale containing the juſt length and weight: and ſhall preſent the ſame cloth to the Juſtices of peace at the next quarter Seſſions of the peace. 39. *Eliz.* 20. P. 115.

And if the ſaid Overſeers ſhall finde any falſe ſeale ſet upon any cloth; or any cloth to be ſtretched, or ſtrained, they ſhall preſent ſuch defaults, at the ſaid next Seſſions, together with the names of the owners of ſuch cloths. *Ibidem.*

But cloth once lawfully ſearched, viewed, weighed, and ſealed by the Overſeers and Searchers of the pariſh, towne, or place, where the ſaid cloths bee made, ſhall not afterwards bee viewed, ſearched, or weighed, by any other perſon or officer whatſoever. 4. *Iac. cap.* &. 21. *Iac cap.* 18.

And if the ſaid Overſeers ſhall finde any ſuch Teynters, Wrinches, or Engines (for the ſtretching of cloth) they ſhall deface the ſame; And for the ſecond offence therein, they ſhall take away the ſaid Teinters, &c. and ſhall ſell the ſame to the beſt value thereof, And by the conſent of two Iuſtices of peace ſhall diſpoſe the money thereof, to the poore of that pariſh *vide.* 21. *Iac. cap.* 18. 39. *Eliz.*

If any perſon commanded by two Iuſtices of peace to appeare to bee made an Overſeer according to this ſtatute, doe (without reaſonable excuſe) refuſe to come, and to take upon him that office, he ſhall forfeit for every ſuch refuſall five pounds, the one halfe to the King, and the other halfe to thoſe two Iuſtices; and ſhall remaine in ward to the Sheriffe, untill hee hath paied the ſame forfeiture, or put in ſureties for the ſame, 39. *Eliz. cap.* 20.

The money that ſhall be made, upon the ſale of any teinters, wrinches, and other ſuch engines, ſhall bee diſpoſed (to the poore of the Pariſh, where the ſaid teinters, &c. ſhall bee found) by the conſent of any two Iuſtices of peace, within the ſame Countie. P. Diſpt. 118.

But by the Statute 7. *Iacobi*, certaine cloths made within the Countie of Cumberland, Weſtmerland, and Lancaſter, ſhall not bee ſubject to ſearch, &c. Alſo by the ſtatute 3. *Iac. cap.* 17. Welch Cottons ſhall not bee ſearched, nor tried: Neither neede they to have any ſeale containing their length, or weight. 7. Iac. 16.

All penalties and forfeitures for want of length, bredth, and weight of cloth, limited by any ſtatute now in force, ſhall bee diſtributed into three parts equally; whereof one third part ſhall be unto the Searchers, finding and certifying the ſame, &c. And the other two parts ſhall bee unto the poore of the pariſh where the ſaid cloth ſhall be made, The ſaid two parts to be levied by way of diſtreſſe, and ſale of the offenders goods, &c. upon a warrant from two Iuſtices of peace, &c. 21 *Iac. cap.* 18.

If any perſon (which ſhall retaile any of the Cloths, Kerſies, Friſes, Rugs, 5. Ed. 6. P. Iuſt. 83.

Rugs, or Cottons, of the ſeverall makinge ſpecified in the ſtatute 5. *Ed.* 6. *cap.* 6.) doe preſent any ſuch woollen cloth which is defective or faultie, unto two Iuſtices of peace, next adjoyning (out of a Citie, Borough, or Towne corporate, where ſuch cloth ſhall bee found faultie, the ſame Iuſtices ſhall cauſe the ſame cloth to bee cut into three equall peeces, whereof the King ſhall have one, the preſenter another, & the third the ſaid Iuſtices ſhall retaine to themſelves.

7. Iac 7. Any two Iuſtices of peace may take order betweene the Clothier and his Spinſters, Carders, Kembers, Sorters, and Weavers, which ſhall unjuſtly, or deceitfully convey away, imbeſill, ſell, or detaine any part of the wooll or yarne delivered to them: and that as well every ſuch Spinſter, &c. ſo offending, as alſo the buyers & receivers (knowing the ſame to be imbeſilled) being thereof convicted, by the confeſſion of the partie, or by one ſufficient witneſſe upon oath, before two ſuch Iuſtices, ſhall give ſuch recompence to the partie greeved, for ſuch their loſſe and dammage, as by the ſaid Iuſtices ſhall bee ordered; & if ſuch offender ſhall not be thought (in the diſcretion of the ſaid Iuſtices) able, or doe not make recompence according to ſuch order, then ſuch offender is to bee whipped, or ſet in the Stockes (in or neere the place where the offence was cõmitted) at the diſcretion of the ſaid Iuſtices. And ſuch two Iuſtices have full power to miniſter the oath to ſuch witneſſes, and finally to heare, end, and determine the ſaid offences.

7. Iac. 6. P. Iuſt. 66. Clothiers and other Maſters, that ſhall refuſe to pay ſuch wages (to their Spinſters, Weavers, or other work-men whatſoever) as ſhall bee aſſeſſed at the Seſſions, by the Iuſtices of peace, and ſhall be thereof convicted before any two Iuſtices of the peace, (one being of the *Quorum*) upon their owne confeſſion, or upon proofe by two ſufficient witneſſes, ſhall forfeit for every ſuch offence, x.s. to the partie grieved, the ſame to be levied by diſtreſſe and ſale of the offenders goods, by warrant from the ſame Iuſtices.

2. Eliz. 12. Raſtal. 349. Two Iuſtices of the peace (one being of the *Quorum*) may take the information of ſtretching, or other deceitfull uſing of Linnen cloth, (by him that hath ſeiſed it) and of his ſeiſer thereof; and may binde the ſaid ſeiſer to give in evidence, and to purſue the ſame matter with effect (at the next Seſſions, &c.) and alſo to pay the moitie of all that hee ſhall recover, to the uſe of the Kings Majeſtie, &c. *Linnen Cloth.*

Corne. CAP. 15.

5. & 6. Edw. 6. 14. 13. Eliz. 25. P. Boreſtal. 6. THe certificate of one Iuſtice of Peace (joyned with the Cuſtomer the place) of the unlading and ſelling of Corne or Cattell, carried by water from one place to another of this Realme, unto the Cuſtomer and Controller of the place where the ſame was imbarqued, is ſufficient upon the ſtat. of fore-ſtalling. See more of corne *titulo Tranſpor.*

Conſtables.

Conſtables. CAP. 16.

CONſtable, this word is derived or deduced of two old *Saxon* words, Cuning, or Kining, which ſignifieth King, and ſtable: ſtabilitie; ſhewing that theſe ancient Officers where reputed to be as the ſtability or ſtay of the King, and Kingdome. *Lamb.* 5. *Doddr* 73.

Every Iuſtice of peace may cauſe two Conſtables to be choſen in each Hundred, *Lambert.* 190. and this ſeemeth to bee meant of the high Conſtables of Hundreds, and to include and imply of congruence the ſwearing of them; and ſeemeth to bee by vertue and force of the Statute of Wincheſter made 13. *Ed* 1. and of the Commiſſion, the firſt *Aſſignavimus*, or clauſe.

And by the Statute of 34. *H.* 8. *cap.* 26. two Iuſtices of peace, the one being of the *Quorum*, may appoint the High Conſtables in Wales.

And yet the uſuall manner is, that theſe High Conſtables of Hundreds bee choſen either at the quarter Seſſions of the peace; or if out of the Seſſions, then by the greater number of the Iuſtices of peace of that Diviſion where they dwell: and likewiſe that they bee ſworne either at the Seſſions, or by warrant from the Seſſions; which courſe hath alſo beene often allowed and commended unto us by the Iudges of Aſſiſe.

Alſo in ſuch manner as they are to bee choſen, in the ſame manner, and by the like authoritie are they to bee removed, for, *eodem modo quo quid conſtituitur, diſſolvitur*; ſo as if there ſhall bee cauſe to remove and put an High Conſtable from his place, it hath not beene thought fit that any one or two Iuſtices of peace ſhould doe it upon their diſcretion, but that it ſhould be done by the greater part of the Iuſtices of that Diviſion, and that for ſome juſt cauſe; or elſe that it be done at and in the generall Seſſions of the peace: and ſo was the direction of Sir *Iohn Doddridge* at Summer Aſſiſes at Cambridge. *Ann. Dom.* 1620.

By the opinon of Maſter *Lambard* and others, theſe Conſtables of Hundreds were firſt ordained to be choſen by the ſaid Statute of Wincheſter *tempore Ed.* 1. And they were to make view of armour twice every yeare, and to preſent before Iuſtices aſſigned, defaults of armour, of watches, of high wayes, and of Huy and Cry, and alſo all ſuch as lodged ſtrangers, for whom they would not anſwere. See *Raſtal.* 379. c. d. *Lamb. dutie of Conſt.* 5. *Minſh. verbo Conſt.* 13. E. 3. c. 6.

Pettie Conſtables (in Townes and Pariſhes) were after deviſed (for the aide of the Conſtables of the Hundred) *viz.* about the beginning of the raigne of King *Ed.* 3. as it appeareth by M. *Lambert* in his Book of the Duties of Conſtables, *pag.* 9. 5 et 8 Eliz. cap. 4. E. 3. cap. 3. & 10.

But it appeareth by *Fineux*, 12. *H.* 7. *fol.* 18. *a.* that whereas the Sheriffes of the Counties, at the firſt had the government of their Counties committed to them, that afterwards by reaſon of the multitude of people, and for that it was too great a thing for one perſon, (*ſc.* the Sheriffe) to undertake, therefore Hundreds were deduced and derived out of the Counties, and in every Hundreds there was ordained a Conſervator of the peace, who was called the (High) Conſtable; and after, Borroughs

or

or Townes were made, and within every of them alſo was ordained a Conſervator of the peace, who is called the pettie Conſtable (and in ſome places the Burrough-head) and this was long before the times that Maſter *Lambard* ſpeaketh of, *&c.* long before *King Ed.* 1. or *King Edw.* 3. which alſo may appeare by the derivation of the word Conſtable, *hic ſupra*, and that they were in the time of the *Saxons*, ſo that it may ſeeme, that as well the high Conſtables, as the pettie Conſtables, and their authorities, were by the Common Law; and that the old Statutes concerning them, are but a recitall of the ancient Common Lawes.

One Iuſtice

The chuſing and ſwearing of theſe pettie Conſtables, is reputed properly to belong to the Court Leet: yet wee finde it uſuall and warranted by common experience, that every Iuſtice of peace doth alſo ſweare them, and upon juſt cauſe doth and may alſo, remove them. See the title *Warrants cap.* 121.

But in ancient time, both the High Conſtabeles of Hundreds, as alſo the pettie Conſtables of every Towne were yearely appointed by the
22.7.3.6. Sheriffe in his Torne, and were there ſworne, or received their oath: And they may ſtill bee choſen or appointed, and ſworne in the Sherifes Torne, as well as in the Leet.

Conſtables lawfully choſen, if they ſhall refuſe to bee ſworne, the Iuſtice of P. may binde them over to the Aſſiſes, or Seſſions of the peace.

Co. 3.41. And here for the better chuſing of the Conſtables, you ſhall underſtand, that the Law requireth that every Conſtable bee *Idoneus homo*, that is, apt and fit for the execution of the ſaid office. And hee is ſaid in Law to bee *idoneus*, who hath theſe three things, Honeſtie, Knowledge, and Abilitie.

Honeſtie, to execute his office truly, without malice, affection, or partialitie.

Knowledge, to underſtand what he ought to doe.

Abilitie, as well in ſubſtance or eſtate, as in bodie, that ſo hee may intend and execute his office diligently, and not through impotencie of body, or want, to neglect the place.

For, Conſtables choſen out of the meaner ſort, they are either ignorant what to doe; or dare not doe that they ſhould; and are not able to ſpare the time to execute this office: They are therefore to bee able men; And are not to be choſen, either by the houſe, or other Cuſtome.

And if any ſhall bee choſen Conſtable, which is not thus inabled and
Co. 8. 41. qualified, he may by Law be diſcharged of his ſaid office, and another fit man appointed in his place.

Leetes choſing unable, or unfit petty Conſtables, is cauſe of forfeiture of the Leete; And ſuch choiſe is voide. And two Iuſtices of peace may remove ſuch a Conſtable, Or rather the Lord of the Leet ſhould be dealt withall to chooſe fitter Conſtables; and upon his default, complaint is to bee made at the Aſſiſes, or Seſſions of the peace: from thence a warrant to be granted to the Iuſtices of peace to chooſe and ſweare others more fit. And ſo was the direction of the Iudge of Aſſiſe at *Cambridge Anno* 8. *Caroli Regis*.

For the Duties of a Conſtable, ſee their Oath *hic cap.* 121.

Counterfeiters. CAP.

Two Iuſtices.

TWo Iuſtices of peace, the one being of the *Quorum*, may convent by Proceſſe, or by their Warrant (*ſc.* may grant their warrant to attach and binde over) to the next generall Seſſions of the peace, or Aſſiſes, any perſon that is ſuſpected of any deceitfull getting into his hands, any money, goods, or other things of any other perſons, by meanes or colour of any falſe tokens; or counterfeit letter made in any other mans name; there to bee examined and ordered. Alſo it ſeemeth, the ſaid Iuſtices may call or convent before themſelves the offenders, and after due examination, &c. may impriſon ſuch offenders, or baile them untill the next generall Seſſions, or Gaole delivery. In this caſe, the ſaid Iuſtices of peace ſhall doe well to take examination of the offence, and to certifie the ſame to the ſaid Seſſions, or Gaole delivery; and withall to binde over the Informers and Witneſſes, to give evidence therein. 33. H. 8. 1. P. Iuſt. 54.

Alſo it ſeemeth that any one Iuſtice of peace may binde ſuch offenders (as Cheators) to their good behaviour, and ſo to the next Aſſiſes, or Seſſions of the peace: or elſe (by force of the Statute. 7. *Iac. cap.* 4.) may ſend ſuch offenders (as idle and diſorderly perſons) to the houſe of correction, there to bee continued untill the next Aſſiſes, or Seſſions, and then and there to be forth-comming. &c. Yet *quære* of ſending them to the houſe of Correction: and it ſeemeth more warrantable if they bee ſent to the houſe of Correction, by order of the Seſſions.

Dying. CAP. 18.

One Iuſtice

VPon information given to any Iuſtice of peace againſt any perſon ſuſpected to offend this ſtatute concerning the uſing of Logwood, *alias* Blockwood, in dying, ſuch Iuſtice may by his Warrant, or other commandement, cauſe to come before him, and may examine by oath, or otherwiſe, the ſervants or workmen of ſuch ſuſpected offenders, and other perſons able to diſcloſe the offence: And upon finding the ſame (*ſc.* that any perſon hath uſed, or cauſed to be uſed, in the dying or colouring of any cloth, wooll, yarne, grogeraine, buffins, or ſilke, or any thing made of wollen yarne, or ſilke, any Logwood) the ſaid Iuſtice ſhall binde with ſureties (to the next Gaole delivery, or quarter Seſſions of that County) as well ſuch ſuſpected offenders, there to make anſwer for their ſaid offence, as the examinates, which doe diſcover the offence; and ſhall alſo certifie thither the ſaid examinations: And if ſuch ſuſpected offender ſhall refuſe to bee bound, then may ſuch Iuſtice ſend ſuch ſuſpected to the next Gaole, there to remaine, till he or ſhe ſhall become ſo bound with ſureties. 39. El. 11. P. 2.

Two Iuſtices.

Any two Iuſtices of the Peace of the Countie where any Logwood ſhall be found (in whoſe hands ſoever it ſhall bee) may cauſe the ſame to be burned. 13. El. 9. P. 1.

Egyptian

Egyptian. CAP. 19.

22. H. 8. 10. Raſtal. 135.

EVery Iuſtice of peace, Sheriffe, and Eſcheator, may ſeiſe all the goods of any Outlandiſh perſons, calling themſelves Egyptians, that ſhall come into this Realme, within one moneth after their arrivall, and may alſo keepe the one moitie thereof to his owne uſe, making account to the King in the Exchequer for the other moitie. And every perſon that can prove by two credible witneſſes (before the ſaid Iuſtice or other officer, that ſo ſeiſeth the ſaid goods) that any of thoſe goods were craftily or felonioully taken from him, ſhall incontinently be reſtored thereto (by the partie that ſo ſeiſeth them) upon paine of the double value thereof to be forfeited by ſuch ſeiſer to ſuch prover. *One Iuſtice*

5. El. 20. But note, that after the moneth, the offence is made felony, by the Statute of *1. & 2. Ph & Mar. cap. 4. & 5. Eliz. cap.* 20. P. 2. And then it ſeemeth the King is to have the goods wholly: And *quere* whether the Statute of 22. *H.* 8. be ſtill in force, or be altered by the ſaid Statute of *1. & 2. Ph. & Ma. cap. 4. & 5. Eliz. cap.* 20.

Felonie CAP. 20.

EVery Iuſtice of peace (by force of the Commiſſion, the firſt *Aſſignavimus*) may cauſe freſh ſuit, Huy and Cry, and ſearch to bee made, by the Sheriffe, Bailiffes, Conſtables, and others, upon any robberie or theft: and alſo may cauſe the Conſtables to arreſt, and to impriſon all ſuch as ſhall be ſuſpected to be theeves, murderers, or felons. *Lamb.* 190.

2. & 3. Ph. & Ma. 10. Alſo, every Iuſtice of peace may and muſt take the examination of all ſuch felons, or perſons ſuſpected for felonie, as ſhall be brought before him. See. *hic cap.* 3.

2 And muſt take information againſt them (of thoſe that bring them) *ſe.* of the fact and circumſtances of the felonie and fact.

3 And muſt put in writing ſuch examinations and informations, or ſo much thereof as ſhall be materiall to prove the felonie; and muſt certifie the ſame to the next generall Gaole deliverie.

1. & 2. Ph. Mar. 13. 4 And after ſuch examination, and information taken, then the Iuſtice muſt commit ſuch Felons to the Gaole, or may baile them, if they be baileable, but then there muſt bee two Iuſtices together, and the one of them of the *Quorum*. See *poſtea tit. Bailement. cap.* 114.

5 And muſt binde over (by Recognizance) the informers (that doe declare any thing materiall to prove the felonie) to appeare, and to give evidence againſt the Felon, at the next generall Gaole deliverie, to bee holden within the Countie, Citie, or Towne corporate, where the triall of the ſaid felonie ſhall be.

If ſuch informer bee unable to travell, &c. then the Iuſtice of peace may take his information upon oath, and may certifie the ſame *ut ſupra*, &c. and may forbeare to binde ſuch informer to appeare perſonally

before the Iuſtices at the Gaole deliverie, &c.

If the Iuſtice of peace ſhall not certifie ſuch examinations and informations to the next generall Gaole deliverie; or if the Iuſtices of peace ſhall not certifie their bailement; or ſhall not binde over the informers to appeare, and to give evidence againſt the Felon, at the next generall Gaole delivery, as aforeſaid; The ſaid Iuſtice of peace ſhall be fined (for every ſuch default or offence) at the diſcretion of the Iuſtices of Gaole delivery. 1 *&* 2. *&* 2. *&* 3. *Ph. & Ma.*

But yet if it be for pettie Larcenie, or other ſmall felonies, the Iuſtice of Peace may binde over the informers, and may certifie the examinations, and informations, to the next quarter Seſſions of the peace; and this was the advice and direction of Sir *David Williams*, Knight (late one of the Iuſtices of the Kings Bench) at the Aſſiſes at Cambridge; for, ſaid he, it was not meet to keepe poore priſoners in the Gaole for ſmall matters or felonies, from one Aſſiſes till another, and therefore he gave order, that the Iuſtices of peace (at their generall Seſſions of the Peace) ſhould trie and deliver offenders for ſmall felonies.

Beſides, the Iuſtices of Peace of every County, as well by vertue of their Commiſſion, as alſo by force of the Statutes of 18. *Ed.* 3. 2. 34. *Ed.* 3. 1. *&* 17. *R.* 2. 10. have authoritie to proceed to the delivery of Felons, and to heare and determine, and to give judgement upon all felonies, whereof any perſon ſhall be indited before them; and are not reſtrained by the Statutes *Ph. & Ma.* but that they may proceed therein before the comming of the Iuſtices of Aſſiſe and Gaole delivery. The words of the Commiſſion to that purpoſe are *Aſſignavimus vos Iuſticiarios noſtros ad pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis feloniis, &c. Et ad omnia & ſingula felonias, &c. audiendum & terminandum, & ad delinquentes caſtigandum & puniendum, Vi. Plo.* 485 *b.* P. Iuſt. 2. 18. Stamf. 38. Li. Intr. 385. Co. 9. 118.

And for that purpoſe alſo the aforeſaid ſtatutes of 18. *E.* 3. 34. *Ed.* 3. *&* 17 *R.* 2. have ordained, that ſome learned in the Lawes ſhall be put into the Commiſſion of the peace, in every Countie within this Realme.

Alſo there be divers Statutes, which by ſpeciall words did ordaine, that the Iuſtices of P. ſhould have authoritie at their generall quarter Seſſions to inquire of, heare, & determine certaine felonies, as the Statutes:

18. *H.* 6. 19 *&* 3. *H.* 5. Souldiers departing without licence. P. Iuſt. 14

1. *Ed.* 4. 2. Felonies preſented before Sheriffes in their Turnes, or Law-dayes. P. Sher. 13.

22. *H.* 8. 11. Cutting downe of Powdicke. P. Iuſt. 11.

25. *H.* 8. 6. Againſt Buggerie. P. Iuſt. 12.

8 *El.* 3 Tranſporting of ſheepe. P. Iuſt. 15.

39. *El.* 4 *&* 1. *Iac.* 7. Incorrigible Rogues. P. Iuſt. 74.

39. *El.* 17. Wandring Souldiers and Mariners. P. Mariners.

43. *El.* 13. Carrying men forcibly out of Cumberland, &c. P. Roberts.

So that the Iuſtices of peace, at their Seſſions, may ſafely proceed to trie all pettie Larcenies, and ſmall Felonies, and ſuch other Felonies whereof they are authorized by theſe laſt recited ſtatutes: And in ſuch caſes alſo, the Iuſtices of Peace that ſhall take the examination of ſuch felonies, may ſafely binde over the informers, and certifie the examinations

tions and infarmations, to their next generall Seſſions of the Peace.

In caſes of murther, or other homicide, the offenders (by the Statute of Gloc. made. 6. *E.* 1. *cap.* 9.) are to abide in priſon untill the Juſtices of Gaole deliverie ſhall come into the Countrey to deliver the Gaole: And by the Statute of 4. *E.* 3. two (wardens or the keepers of the peace, or) Juſtices of peace might take indictments, &c. but the perſons ſo indited were to be delivered by the Juſtices of Gaole deliverie.

But after by the Statute of 18. *E.* 3. *cap.* 2. before mentioned, Juſtices of peace were aſſigned to heare and determine felonies, &c. and to inflict puniſhment according to Law, and the manner of the deede. And by the Statute of 34. *E.* 3. *cap.* 1. Juſtices of peace had power given them to heare and determine at the Kings ſuit, all manner of felonies done in the ſame Countie, according to the Law, &c. And by the Statute of 17. *R.* 2. *cap.* 10. in every Commiſſion of the peace, two men of Law (amongſt others) are to this purpoſe to be aſſigned, *ſc.* to goe & proceed to the deliverance of Felons, as often as they ſhall thinke it expedient.

Lamb. 529. Cromp. 56. And yet there be ſome felonies, which the Juſtices of peace cannot heare or try at all, neither can they inquire thereof, nor otherwiſe deale therewith; (as it ſeemeth) as namely:

1 Firſt, if any man being the Kings ſworne ſervant (and his name in the Chequer-roll of his houſhold) under the degree of a Lord, ſhall conſpire with another to deſtroy the *King Majeſtie, or any Lord of this Realme, or any other ſworne to the Kings Councell, or the Steward, Treaſurer, Comptroller of the Kings houſe: every of theſe offences are made felonie by the Statute made 3. *H.* 7. But ſuch offences are by the ſame Statute appointed to be tried by a Jury of the Check-rol of the ſame houſhold, and before the Steward, Treaſurer, Controller of the kings ſaid houſe.

* This is High Treſon. See *pleas* 3. H. 7. C. 14.

2 All murthers, or manſlaughters committed or done within any the Kings palaces or houſes, or within the limits or bounds thereof, or within any other houſe where his Majeſtie ſhall happen to be then abiding in his royall perſon, ſhall be enquired of, tried, heard, and determined before the Lord great Major, or Lord Steward for the time being of the Kings houſhold, and in their abſence before the Treaſurer and Comptroller of the ſame houſhold, and the Steward of the Marſhalſey, or two of them, &c. and ſuch triall to be by the inquiſition and verdict of his Majeſties houſhold ſervants in the Check-roll. 33. *H.* 8. *cap.* 12.

3 Embeaſelling of any Record, Writ, Returne, Panell, Proceſſe, or Warrant of Atturny, in the Chancerie, Eſchequer, the one Bench or the other, or in the Treaſurie, whereby any judgement ſhall be reverſed, every ſuch offence is made felonie in ſuch Imbeſellor, Stealer, or Taker away, and in their procurors, Counſellors, and Abettors, by the Statute of 8. *H.* 6. But ſuch offences are by the ſame Statute appointed to bee tried by a Jurie of twelve men, whereof the one halfe ſhall be of the men (*ſc.* of the Officers and Atturneyes) of the ſame * Courts, who ſhall bee ſworne before the Judges of the ſaid Courts, *ſc.* of the one Bench, or of the other, to enquire of that offence: and if they ſhall indite the Embeaſellors of ſuch record, &c. they ſhall be arraigned thereupon before

8 H. 6. c. 12. Co. 11. 34.

* P. Feb. 18.

the ſame Judges, as in caſes of other felonies.

4 Raſing of any ſuch Record is alſo felonie, within the ſaid Statute of 8. *H.* 6. and to be tried as aforeſaid. *Br. Coro.* 174.

5 Forging of any deed or writing ſealed, or of any Court Roll, Will, or Acquittance; or to cauſe or aſſent to be made any ſuch forged writing; or to publiſh or ſhew forth in evidence any ſuch forged writing, knowing the ſame to be forged; if any perſon being once lawfully convicted of any of the ſaid offences, ſhall afterwards commit any the ſaid offences againe, everie ſuch ſecond offence is made felonie by the Statute of 5. *Eliz.* But by the ſame Statute, ſuch offences are to be inquired of, heard and determined, by and before Juſtices of Oyer and Determiner, and Juſtices of Aſſiſe. 2. R. 3. fo. 10. 5 Eliz. c. 14.

And therefore whereas one *R. Smith* was indicted at the Seſſions of the Peace in the Countie of Oxford, upon the ſaid Statute of 5. *Eliz.* for forging of a falſe deed, it was adjudged by the whole Court in the Kings Bench, *Ann.* 30. *Eliz.* that the ſame Indictment was not well taken: For although the Juſtices of peace by their Commiſſion have power (of Oyer and determiner) to heare and determine felonies and Treſpaſſes; &c. And have in their ſaid Commiſſion an expreſſe clauſe *ad audiendum & Terminandum*, and ſo are Juſtices of Oyer and Terminer, yet it was reſolved by the Court; that for as much as there is a Commiſſion of Oyer and Terminer knowne diſtinctly by that name, and the Commiſſion of the peace is knowne diſtinctly by another name, that the ſaid Indictment taken before the Juſtices of the Peace at their Seſſions, was well taken, and therefore it was quaſhed. Co. 9. 118. Cromp. 120.

The reaſon of this laſt caſe and judgement, ſeemeth to hold in the former caſes, and in all other like caſes, where any Statute doth ſpecially give authoritie to any other diſtinct Court, or to other Juſtices or Commiſſioners (leaving out the Juſtices of peace) to enquire of, heare, and determine, or to try Felons, &c. there the Juſtices of peace (at their Seſſions) cannot inquire thereof, &c.

6 Servants imbeſelling, or taking away the goods of their deceaſed Maſter, the Executors of the partie deceaſed may have a Writ directed to the Sheriffe to make open Proclamation two Market-dayes, that ſuch offenders ſhall appeare in the Kings Bench at a certaine day: And if ſuch Writ be returned, that Proclamation is thereupon made accordingly, then if the ſaid perſons which ſhould appeare by reaſon of the ſaid Proclamation, do make default, and doe not appeare in the Kings Bench at the day ſpecified in the ſaid Writ, they ſhall bee attainted of Felonie, by the Statute of 33. *H.* 6. So that ſuch offence of ſervants imbeaſelling their ſaid Maſters goods, beginneth firſt to be felonie upon their default of appearance in the Kings Bench, after Proclamation; of which default the Juſtices of peace cannot take notice, for that they have not before them the record of ſuch default, or not appearing, and therefore the Juſtices of peace cannot enquire of ſuch Felonies, &c. *Cromp.* 56. *Lambt.* 529. Co. 13. H. 6. c. 1.

But in the former caſes, if any ſuch offender ſhall be brought before any Juſtice of peace, and charged with any ſuch Felonie, *quere* how farre the Juſtice of peace is to deale, or what he is to doe therein, conſidering the

the Iuſtices of peace are no Iudges of ſuch Felonies, neither have they any juriſdiction given them by the Statutes in ſuch caſes: and yet for that they are by their Commiſſion authorized to deale with all felonies; as alſo with all Offences againſt the peace of the King, and Realme, of which ſort all theſe laſt former offences are, *Quere* if the Juſtice of peace ſhall not doe well to examine the offence, and then to certifie his examination, to ſuch perſons as by the Statute are made Iudges of the cauſe: And alſo to commit ſuch an offender to priſon, to binde over the informers: And to take their information upon oath.

7 Againe, if a man had beene felonioufly ſtricken in one Countie and after died thereof in another Countie, (by the Common Law) no indictment could be thereof taken in either of the ſaid two Counties, for that the Iurors of the Countie where ſuch partie died (of ſuch ſtroke) could not take knowledge of the ſaid ſtroke (being in a forreine Countie:) nor the Iurors of the Countie where the ſtroke was given, could not take knowledge of the death in another Countie. But now by the Statute of 2. & 3. *Ed.* 6. an indictment thereof found by Iurors of the Countie where the death ſhall happen (whether it ſhall be found before the Coroner, or before Iuſtices of peace, or other Iuſtices, &c.) ſhall bee good and effectuall in Law: And that the Iuſtices of Gaole deliverie, and Oyer and Terminer in the ſame Countie, where ſuch indictment ſhall be taken, ſhall and may proceed upon the ſame, as if ſuch ſtroke and death had beene all in one and the ſame Countie.

2 & Ed. 6. cap. 24.

Alſo where a felon had robbed or ſtollen goods in one Countie, and after convaied their ſpoile, or goods ſo ſtollen, into another Countie, to their adherents there, who knowing of ſuch felonie, received the ſame goods; in which caſe, although the principall were after attainted, the Acceſſarie notwithſtanding eſcaped, by reaſon that he was Acceſſarie in another Countie, and that the Iurors of the ſaid other Countie (by the Common Law) could take no knowledge of the principall felonie, in the firſt Countie: but now by the ſaid Statute of 2. & 3. *Ed.* 6. it is enacted, That where any murder or felonie ſhall be committed and done in one Countie, and other perſons ſhall be acceſſarie (in any manner, to any ſuch murder or felonie) in any other Countie, That an indictment thereof found or taken againſt ſuch Acceſſarie, before the Iuſtices of peace, or other Iuſtices, &c. in the Countie where ſuch offence of Acceſſarie ſhall be committed, ſhall be good and effectuall in Law: and that the Iuſtices of Gaole deliverie, or Oyer and Terminer, of or in ſuch Countie where the offence of any ſuch acceſſarie ſhall be committed, ſhall write to the *Cuſtos Rotulorum*, where ſuch principall ſhall bee attainted or convict, to certifie them whether ſuch principall be attainted, convicted, or otherwiſe diſcharged of ſuch felonie; and thereupon the *Cuſtos Rotulorum* ſhall make certificate in writing under his ſeale, to the ſaid Iuſtices accordingly; and then the Iuſtices of Gaole deliverie, or Oyer and Terminer, ſhall proceed upon every ſuch Acceſſarie, in the Countie where ſuch Acceſſary became Acceſſarie, as if both the principall offence and acceſſarie, had beene committed and done in the ſaid Countie where the offence of acceſſarie was committed.

Co. 9. 117.

So as by the letter of this laſt recited Statute, the juriſdiction over theſe laſt recited felons, and over ſuch acceſſaries, is not committed to the Juſtices of peace to proceede to the triall of them: But this authority is remitted to the Juſtices of Gaole delivery, or of Oyer and Terminer. Yet the Juſtices of peace may examine theſe offences, and take information againſt the offenders, and certifie the ſame to the next generall Gaole deliverie, and may binde over the Informers, and commit the offenders: Alſo the Juſtices of peace may inquire thereof, and take indictments againſt them, as in other caſes of felonie.

8 Laſtly, the Juſtices of peace (at their Seſſions) cannot make triall of ſuch as be indicted of felonie, before Coroners, or before the Juſtices of Gaole deliverie, or of Oyer and Terminer, unleſſe the ſame perſons (*ſc.* the ſaid Coroner, Juſtices of Gaole deliverie, or of Oyer and Terminer) were alſo Juſtices of peace in the ſame County, ſo as the Indictment may be underſtood to be taken by them, as before Juſtices of the peace. For the Commiſſion of the peace, and the authoritie of Juſtices of the peace, extendeth onely to trie ſuch as ſtand indicted before themſelves; or before former Juſtices of the peace; or before the Sheriffe in his Tourne, or the Steward in a Leet. See *Lamb.* 486. *& Stat.* 1. *Ed.* 4. *cap.* 2. *& Stamf.* 87. for indictments taken in the Sheriffes Tourne; and for indictments taken in Leets, See *Br. tit. Leet.* 1. And yet by the booke 8. *H.* 4. *fol.* 18. it ſeemeth that indictments or preſentments of Felonie taken in the Leet, ſhall be delivered over to the Juſtices of Gaole deliverie. *Br. Franch.* 5. Lamb. 530.

Alſo in ſome caſes of Treaſon and miſpriſion of Treaſon, the Juſtices of peace may inquire, and take indictments, but cannot proceed to triall, or to heare and determine the ſame.

As of maintainers of the authoritie of the Biſhop, or See of Rome; And of their procurers, and maintainers, &c. Juſtices of the peace in their quarter Seſſions may inquire of ſuch offences; But they muſt certifie everie preſentment thereof made before them, into the Kings Bench (within fortie dayes, upon forfeiture of an hundred pounds by every Juſtice of peace there preſent, not making certificate accordingly) 5. *Eliz. cap.* 1. 5. Eliz. 1. 13. Eliz. 2.

2 So of ſuch as ſhall obtaine from Rome, &c. any Bulls, or Abſolution; Or ſhall publiſh or put in ure any ſuch Bull; Or ſhall give or take Abſolution, by colour of any ſuch Bull; 13. Eliz. 1. 13. Eliz. 2.

And their procurers, and maintainers, &c.

And the concealers of ſuch Bull, or Abſolution offered to them.

3 So of ſuch as ſhall withdraw any ſubject, from the Religion now uſed to the Romiſh Religion; Or from their obedience to the Kings Majeſtie; Or to the obedience of the Pope, &c. 13. Eliz. 2.

And of ſuch as ſhall be ſo withdrawne.

And of their procurers, and maintainers, &c.

And of the concealers of ſuch offences.

4 So of ſuch as ſhall bring into this Realme, any *Agnes Dei*, or other ſuperſtitious pictures, or Beads; Or ſhall deliver, or offer any ſuch to any ſubject: 13. Eliz. 2. 13. Eliz. 2.

And of the receivers of ſuch ſuperſtitious things.

For

For all theſe laſt recited offences againſt the Stat. 5. *Eliz.* 1. 13. *Eliz.* 2. & 23. *Eliz.* 1. See more fully, *poſtea tit. High Treaſon.*

And if any ſuch offendor againſt any of theſe laſt mentioned ſtatutes, ſhall be brought before any Juſtice of peace, and charged with any ſuch offence, it ſhall be the Juſtices part, to take the examination of ſuch offences, and to bind over the Accuſers and (materiall) Informers, to appeare (and to prefer a bill of Indictment, and thereupon to give in Evidence to the Inquirors, againſt ſuch offenders) at the next quarter Seſſions (as it ſeemeth;) Or rather at the next Aſſiſes, or generall Gaole deliverie; Or elſe in the Kings Bench, whenſoever (upon reaſonable warning) they ſhall be thither called; And then to commit the offender to the Gaole; And after to certifie the ſaid examinations, informations, and recognizances (by him taken) to the ſaid Seſſions, or Gaole delivery, or into the Kings Bench, &c.

In other caſes of High Treaſon, or Miſpriſion of Treaſon, what the Juſtices of peace out of their Seſſions ſhall doe with ſuch offenders brought before them, See *Poſtea tit. Miſpriſion, cap.* 90.

But now to returne to the buſineſſe of the Juſtices of peace out of their Seſſions.

If one ſhall bring a man ſuſpected of felonie before any Juſtice of peace, but refuſeth to be bound to give evidence againſt the priſoner, (either at the generall Gaole delivery, or quarter Seſſions, as the caſe ſhall require), If ſuch bringer hath given evidence before the ſaid Juſtice againſt the priſoner, or can declare any thing materiall to prove the felony, and will not be bound to give evidence upon his triall, the Juſtice of peace (upon his diſcretion) may commit to priſon ſuch perſon ſo refuſing, or may, binde him to his good behaviour. But if the bringer of a perſon ſuſpected of felonie, cannot declare any thing materiall to prove the felonie, nor any other perſon then preſent, it ſeemeth the Juſtice ought not to commit the priſoner: And ſo was the direction of Sir *David Williams*, at the Aſſies at Cambridge aforeſaid. Yet the Juſtices ſhall doe well to examine the priſoner, and if he ſhall confeſſe the felonie, then to commit him; Or if upon his examination, there ſhall appeare any juſt cauſe of ſuſpition; Or if the priſoner be a man of evill fame, and that there be a felonie committed; in theſe caſes, the Juſtices ſhall doe well not to let him goe, but at leaſt to binde him over to the next Gaole deliverie, and in the meane time to take further information againſt him. See the other title, *Felonie cap.* 109.

Cromp. 202. b.

Fiſh. CAP. 21.

Weſt. 1. 47. 13. R. 2. 19. P. Fiſh. 1. P. Iuſt. 14.

EVerie Juſtice of peace is a Conſervator of rivers, and of the Statutes made in that behalfe (*ſc.* of the Statute of 13. *Ed.* 1. *cap.* 47. 13. *R.* 2. *cap.* 19 & 17. *R.* 2 *cap.* 9.) within his Countie where he is a Juſtice, and may appoint and ſweare under-conſervators; and (when he may attend it) ought to ſurvey all the weares in the rivers, that they be of a reaſonable wideneſſe, and all other defaults done againſt the aforeſaid ſtatutes.

Everie

Every Juſtice of peace, may burne the nets, and other engines, put or caſt into waters, wherewith the frie or breed of any fiſh may be taken or deſtroyed; And this ſhall be for the firſt offence: and for the ſecond offence, the ſaid Juſtice of peace may (as it ſeemeth) impriſon ſuch offenders for a quarter of a yeare; And for the third offence, one whole yeare: and as the treſpaſſe or offence increaſeth, ſo may the Juſtice of peace increaſe the puniſhment of ſuch offenders. See the Statutes 13. *E.* 1. 47. 13. *R.*2. 19. & 17. *R.*2. 9.

By warrant of any one or moe Juſtices of Peace, the Conſtables and Church-wardens (where any offence is committed in deſtroying the ſpawne and brood of ſea-fiſh, againſt the Statute made. 3. *Iac. Regis*) may levie the forfeitures of the offenders by diſtreſſe and ſale of the offenders goods, rendring to the offenders the ſurpluſage. 3 Iac. 12.

The particulars of the ſaid Statute 3. *Iac. Regis*, are as followeth:

1. No perſon in any haven, harbour, or creeke, or within five miles of the mouth of any haven, harbour, or creeke of the Sea, ſhall fiſh with any draw-net, or drag-net, under three inches meaſh (*viz.* one inch and an halfe from knot to knot) except for taking of Smoulds in Norfolke only; And except for taking of Herring, Pilchards, and Spicots.

2. No perſon in any haven, harbor, or creeke, or within five miles of the mouth of any haven, &c. ſhall fiſh with any net with canvas, or other engine or device, whereby the ſpawne, frie, or brood of any Sea-fiſh may be deſtroyed.

And for every ſuch offence, the offenders ſhall forfeit their nets, and ten ſhillings in money; the one halfe thereof to be to the uſe of the poore of the Towne or Pariſh where the offence ſhall be committed, and the other halfe to him that will ſue for the ſame; and to bee levied by the Mayor or other head Officer of every Citie, Borough, or Towne Corporate; or by warrant from one or moe Juſtices of Peace. *Vt ſupra.* 3. Iac. 11.

Fiſh-dayes.

EVery Juſtice of peace, in the Lent time, may enter into, and ſearch all victualling-houſes, And finding there any Beefe, Mutton, Veale, or Hogs killed, or dreſſed (except fleſh to be killed three dayes next before Eaſter) may take and ſeiſe the ſame as forfeit; And ſhall give the ſame to priſoners, and other poore folkes, by their diſcretion. 1. Iac. 25. P. 9.

Forcible Entrie CAP. 22.

WHat is Forcible Entrie, and what is a forcible holding, or detainer, ſee the other title *Forcible Entrie, hic cap.* 77. 15 R. 2. 3. 8. H. 6. 9. P. 2. Dyer, 210.

One Juſtice Every Juſtice of peace, upon complaint to him made, or upon other notice to him given, of any Forcible Entrie into, or holding, or detainer of poſſeſſion of any lands, tenements, or other poſſeſſions (or of any benefices or offices of the Church) contrarie to theſe Statutes, without any examining, queſtioning, or ſtanding upon the right or tile of either partie,

partie, ought in convenient time (at the coſts of the partie grieved) to doe execution of theſe Statutes in manner and forme hereunder following. See *Lamb.* 150.

15. R. 2. 2. Lamb. 152. 1. Firſt, he ought to goe to the place where ſuch force ſhall be. And *Arreſt.* he may take with him ſufficient power of the Countie, or Towne, by his diſcretion, and the Sheriffe alſo if need be to aid him, for the better execution of this buſineſſe; *&c.* as well for the arreſting of ſuch offenders, as alſo for the removing of the force, and for the conveying of them to the next Gaole. And whoſoever (of the Countie) ſhall refuſe to attend and aſſiſt the Juſtices of peace herein, ſhall be impriſoned and make fine to the King, 15. *R. 2. cap. 2.*

2. He ought to arreſt and remove all ſuch offenders, as at his comming he ſhall ſee, or finde continuing the force; and may take away their weapons, harneſſe, and armour, and preſently cauſe them to be preiſed, and after to bee anſwered to the King as forfeited, or the value therof. *Vide Libr. Intrac. tit. faux impriſonment, diu.*

If the doores be ſhut, and they within the houſe ſhall deny the Iuſtice to enter, it ſeemes he may breake open the houſe to remove the force.

But if ſuch offenders being in the houſe, at the comming of the Iuſtice, ſhall make no reſiſtance, nor make ſhew of any force, Then the Iuſtice cannot arreſt, or remove them, except upon the enquirie after a force be found. See *Cromp.* 73. and the other title, *Forcible Entrie.*

Cromp. 71. Alſo if the houſe or land which is holden with force ſhall extend into two Counties, and the offenders remove their force into that part of the houſe or land which is in the other County, when the Juſtices doe come, they cannot then remove the force.

And if the Juſtice at his comming ſhall ſee or finde a force, and ſhall remoove the offenders, yet he may not upon this his owne view, reſtore the partie ouſted, to his poſſeſſion againe, without enquirie firſt made of the force by a Jury, as appeareth hereafter.

14. H. 7. 8. Co. 8. 121. 3 Alſo the Juſtice ought to make a record of ſuch force by him viewed; *Record.* which record ſhall bee a ſufficient conviction of the offenders; and the parties ſhall not be allowed to traverſe it.

Lamb. 152. 163. & 375. And this record (being made out of the Seſſions by a particular Juſtice) the ſaid Juſtice may keepe by him: or hee may make it indented, and certifie the one part into the Kings Bench; or to leave it with the Clerke of the Peace; and the other part he may keepe himſelfe.

The forme of the Recorde, ſee the other title; *Forcible Entrie*, among the Preſidents. *cap.* 129.

St. H. 6. 5. Br. Peace. 4. Co. 8. 120. P. 2. 4 Alſo he ought to commit (immediately) to the next Gaole, all ſuch *Impriſon.* perſons, as he ſhall finde and ſee continuing the force at his comming to the place; The ſaid offenders there to remaine convict by his owne eye, teſtimonie, and record, untill they have paid a fine to the King (or given ſecuritie for the payment thereof:) For this ſight and view of the force by the Juſtice (being a Judge of Record) maketh his record thereof (in the judgement of the Law) as ſtrong and effectuall, as if the offenders had confeſſed the force before him; and (touching the reſtraining of traverſe) more effectuall, than if the force had beene found by a Iury, upon the evidence of others.

And

And yet the words of the Statute ſeeme more large, *ſc.* and if he doe finde any that make any ſuch Forcible Entry, or that hold the place with force, &c. hee ſhall commit the offenders to the Gaole, &c. But ſuch force muſt be in the preſence or view of the Iuſtice of peace, or elſe hee can neither record it, nor yet commit the offenders, 13. *H.* 7. *Crooke* 41. P. 2. Cromp. 195. b.

The forme of the *Mittimus*, ſee the other title, *Forcible Entrie, cap.* 129.

Fine. 5 Alſo the ſame Iuſtice of peace, or ſome of them that ſhall ſee the force, (as having beſt knowledge of the matter, and of the quantitie of the offence, and having the cuſtodie of this Record) are the proper Iudges over this offence; and therefore may aſſeſſe the fine upon everie ſuch offender: but the fine muſt bee impoſed upon every offender ſeverally, and not upon them joyntly; and the Iuſtice ought to eſtreat the ſame fine, and to ſend the eſtreat into the Eſchequer, that from thence the Sheriffe may be commanded to levie the ſaid fine to his Majeſties uſe. But upon the ſame fine ſo aſſeſſed and eſtreated, it ſeemeth the Iuſtice is to deliver the offenders; *Lambert*, 554. Co. 8. 41. a. Lamb. 163, 597. Co. 11. 43. a.

Alſo upon payment of the ſaid fine to the Iuſtice, or upon Sureties found (by Recognizance) for the payment thereof, the ſaid Iuſtice may deliver the offenders out of priſon againe at his pleaſure, by ſome opinions; But *quere* whether the Iuſtices of peace ſhall meddle with receiving the fine, for that the Sheriffe is accomptant for all fines, *Lambt.* 555. Lambt. 162. 555 Br. Ipp. 10. Cromp. 161. Lam. edition, 1582.

Or the Iuſtices of peace (by ſome opinions) may record ſuch force, and commit the offenders; and after certifie the record to the Iuſtice of Aſſiſe, and Gaole delivery (as it was done at Stafford Aſſiſes, *Anno* 26. *Eliz.* by the report of Maſter *Crompton*;) or elſe to certifie it to the generall Seſſions of the Peace (as it ſeemeth to Maſter *Crompton*) and there the offenders may be fined; for, ſaith he, the Statute doth not ſay, that the fine ſhall bee aſſeſſed by them that record the force, more than by other Iuſtices.

Or rather the Iuſtice of peace may certifie or deliver the Record by him made (and referre the fine and further proceedings therein,) to the Kings Bench (in regard of their ſupreme authoritie in ſuch caſes.) And this Maſter *Lambert* thinketh to be the ſafeſt courſe. Lamb. 163.

Enquire. 6 Alſo the Iuſtice of peace, notwithſtanding his owne view of the force, may & ought in ſome good Towne or place neere where the force was (at the coſts of the party grieved) to enquire by a ſufficient Iurie of the ſame Countie, to be returned by the Sheriffe, as well of thoſe which made ſuch Forcible Entrie, as of thoſe which made ſuch forcible deteiner. See the Statute 8. *H.* 6. *cap.* 9. & *Plo.* 86.

And here note, that any one Iuſtice of peace alone out of the Seſſions, may make an enquirie (being ſo appointed by the Statute;) whereas otherwiſe there muſt be two Iuſtices at the leaſt, to make an enquirie, or to hold a Seſſions, and one of them of the *Quorum*. *Br. Peace* 14.

And this enquirie ought to be made, whether the offences be preſent or gone, at the comming of the Iuſtices of peace; yea, this enquirie the Iuſtice muſt make, though he goe not to ſee the place where the force is, for without this enquirie, there can be no reſtitution. See more concerning this enquirie, in the other title, *Forcible Entrie, cap.* 80. &c. Br. Forcib. 27.

Alſo

Alſo by the words of the Statute of 8. *H.* 6. *cap.* 9. (*mayntenant meſme les Juſtices doient enquirer, &c.*) the Juſtices are to make this enquirie immediately after the force committed, and complaint made to them by the partie grieved; and yet if they doe make this inquirie at any convenient time after, it ſufficeth *Cromp.* 124.

If the Sheriffe ſhall not duly execute the Juſtices precept directed to him for returning a Jurie, he ſhall forfeit 20. li. And the Juſtice of peace may proceed to heare and determine ſuch default of the Sheriffe. See 8. *H.* 6. *cap.* 9. *hic poſtea.*

The forme of a Precept to the Sheriffe to returne a Jurie, *vide hic cap.* 129.

The forme of the Enquirie, Preſentment, or Verdict, ſee *hic cap.* 129.

7 And if upon ſuch enquirie, ſuch Forcible Entrie (or forcible holding or deteiner) ſhall be found by the oathes of the Enquirors, then the ſaid Juſtice of Peace ſhall reſeiſe the lands and tenements ſo entred upon or holden, and thereof put the partie in poſſeſſion againe, which in ſuch ſort was put, or holden out. See the other title of *Forcible Entrie. cap.* 81. 82. 83. 84. *Reſtitution.*

But the putting out, as alſo the holding out, muſt of neceſſity be found, and that by expreſſe words in the indictment. See as before.

And ſo note that the Juſtice or Juſtices of peace, recording onely the force by his or their view, may not put the party put out, into his poſſeſſion againe; but the Juſtice muſt firſt make enquirie thereof, by twelve men of the Countie (at a ſpeciall Seſſions by the ſaid Juſtices to be holden) and then the force being found by the ſaid Jurie, the ſaid Iuſtice (or Juſtices) may put the partie ſo put out, into his former poſſeſſion.

And this reſtitution, the Juſtice of peace may make himſelfe: or he may make his Warrant to the Sheriffe to doe it: or elſe he may certifie ſuch preſentment or indictment, taken before him, into the Kings Bench, and ſo leave the reſtitution to be awarded out of that Court. See as before, *cap.* 82.

But the Juſtices of Aſſiſe and Gaole delivery, not the Juſtices of peace at their generall Seſſions, cannot (as it ſeemeth) make or award Reſtitution, except the indictment were found before them; but the Juſtices of peace only, or ſome of them that were preſent at the enquirie, and when the indictment was found, (they onely) have power to make reſtitution; except notwithſtanding the Juſtices of the Kings Bench, who have a ſupreme authoritie in all caſes of the Crowne. Co. 9. 118.

And therefore if the Record, of the preſenement of ſuch force, ſhall be delivered by the Juſtices of the peace into the Kings Bench: or that the ſame preſentment or indictment ſhall be removed and certified thither by *Certiorari*, there the Juſtices of the Kings Bench may award a Writ of Reſtitution to the Sheriffe of the ſame Countie, to reſtore poſſeſſion to the partie ſo expelled. Cromp. 124.

After it be found by ſuch Enquire, that ſuch Forcible Entrie or deteiner is made, the Juſtice of peace may breake open the houſe by force, to reſeiſe the ſame, and ſo put the partie, ſo put out, in poſſeſſion againe. And ſo may the Sheriffe doe, having the Juſtices Warrant. 8. R. 41. b

The

The forme of ſuch Warrant from the Juſtice of peace to the Sheriffe, to make reſtitution, ſee in the other title of *Forcible Entrie, cap.* 129.

But the Juſtices of Peace may not (in any caſe) make reſtitution, without ſuch enquirie firſt had, and ſuch force thereby found: And if the Juſtice ſhall make reſtitution without enquirie it ſeemeth to be puniſhable in the Star-Chamber.

Alſo this reſtitution ought to be made to none but to him only that was put out; ſo that if the father bee put out by force, and dieth (after enquirie, and before reſtitution) his heire ſhall not have reſtitution.

To whom reſtitution ſhall be made, ſee the other title, *Forcible Entrie, cap* 83.

Alſo, ſuch reſtitution muſt be made onely where a man is put out, or holden out, &c. of houſe, or land, and is not to be underſtood of a Rent, Common, Advowſon, or ſuch like. See the other title, *Forcible Entrie, cap.* 81.

Alſo, the Juſtice may make reſtitution, notwithſtanding any offer of Traverſe; but yet upon Traverſe tendred, the ſafeſt way (for the Juſtice of peace) ſeemeth to be; for him to deliver, or certifie the Preſentment into the Kings Bench, and ſo to referre the further proceedings therein to them. See the other title, *Forcible Entrie, cap.* 84.

And although theſe Statutes doe inflict no penaltie upon the Juſtices of peace, if they ſhall not execute theſe Statutes; yet if (upon complaint, or other notice to them given of ſuch force) they ſhall not at leaſt remove the force, record it, and commit the offenders, they are puniſhable in the Star-Chamber.

In the caſe of *Drayton Baſſet* (in the Countie of Stafford) about *Anno.* 31. *Eliz.* certaine Juſtices of peace of that Countie (although they dwelt not neere to the place) where a great Riot was committed, by a Forcible Detainer, were for their default fined in the Star-Chamber, upon the Statute of 17. *R.* 2. *cap.* 8. (as Maſter *Crompton* reporteth) which ſtatute is, that the Sheriffe, and all other the Kings Officers, ſhall ſuppreſſe Rioters, which ſhall aſſemble themſelves in outragious or great number. See *Cromp. Author. des Courts, fol.* 32.

Although the Juſtice of peace ought to commit to the Gaole, and may find all ſuch as hee ſhall ſee continuing their force at his comming to the place; yet upon force found by the enquirie onely, and not viewed and ſeene by the Juſtice (although this preſentment of the Iurie bee a conviction of the offenders) yet it ſeemeth the Juſtice of peace may neither fine, nor ſend to the Gaole the ſaid offenders, (by the ſtatute of 8. *H.* 6. which appointeth the enquirie:) for the Juſtice hath power by the ſaid ſtatute to make reſtitution only, as ſaith *M. Lambert*, 162. yet *M. Crompton* holdeth the contrarie, *ſc.* that the partie indited ſhall be fined for the force found, although the Statute of 8. *H.* 6. ſpeaketh not of the fine. Cromp. 161. b. 162 a.

But howſoever, the Juſtice of peace (upon force found by the Enquirie) is to remove the offenders that be preſent, that ſo he may reſtore the other; and may binde the offenders to their good behaviour: and if the offenders be gone, yet the Juſtice may make his Warrant to take the offenders, and may after ſend them to the Gaole, untill they have found ſureties for their good behaviour. Note,

Note, that if ſuch Forcible Entry, or Deteiner ſhall be made by three perſons, or moe, then it is alſo a Riot; and then (if there bee no former enquiry thereof made) it ſeemeth the two next Iuſtices of Peace (upon notice thereof) ought to enquire thereof (as of a Riot) by a Iurie, within one moneth, upon paine to either of them making default to forfeit a hundred pounds.

Cromp. 42.b

8.H.6.9. P. Iuſt. 89. Raſt. 174.c.

Alſo one Iuſtice of Peace may (as it ſeemeth) heare and determine the defaults of Sheriffes and Bailiffes, in not returning ſufficient Iurours (whereof every one ſhall have lands, &c. to the value of forty ſhillings by the yeare at the leaſt) before him, to enquire of ſuch Forcible Entry or Deteiner: and the ſaid Iuſtice of Peace may proceed therein as well by Bill, at the ſuit of the party grieved, for himſelfe, as alſo by indictment onely for the King; and the ſame Proceſſe ſhall bee made againſt ſuch perſons indicted, or ſued by Bill in this behalfe, as ſhould be made againſt perſons indicted, or ſued by Writ of treſpaſſe with force and armes againſt the Kings Peace: what the Proceſſe in ſuch caſe is, *vide tit. Proceſſe, cap.* 132.

Defaults of Sheriffes.

8.H.6.9. Raſt. 174 d.

And though any one Iuſtice of Peace may proceed in every of theſe former caſes of Forcible Entry, or Deteiner, as aforeſaid, yet if two or moe Iuſtices ſhall joyne therein together, it is the better; for *Plus vident oculi, quam oculus; & ſecurius expediuntur negotia commiſſa pluribus.* Co. 4.46.

Alſo the Major, Iuſtice, and Iuſtices of peace, and the Sheriffes and Bailiffes of Cities and Boroughs having Franchiſe, ſhall have in the ſaid Cities, Townes, and Boroughs, like authority to remoove ſuch Entries, and to enquire of ſuch Entries, or putting, or holding out, and in other Articles aforeſaid, riſing within the ſame, as the Iuſtices of peace and Sheriffs in Counties and Shires have.

Corporate Townes.

5.Ed.3.1.

Alſo every Iuſtice of Peace to whom a Writ upon the ſtatute of Northampton (concerning the removing of a force) ſhall be delivered, ought to execute the ſame Writ, *ſc.* he ought to remove the force, and to certifie his doings therein into the Chancery.

The Stat. of Northamp.

And for that the Iuſtice of peace, to whom this Writ ſhall bee delivered, is herein but a Miniſter, and is to certifie that which he ſhall doe therein, I will here ſet downe the manner how hee ſhall proceed to execute this Writ.

First, when the Iuſtice of peace ſhall come to the place where the force is ſuppoſed, by this Writ, hee may cauſe three *Oyes* for ſilence to be made, and then hee may make proclamation in the Kings name to this effect:

Lamb. 173.

The Kings Majeſties Iuſtice of Peace ſtraightly chargeth, and in his Majeſties name commandeth all and every perſon to keepe ſilence, whileſt his Majeſties Writ, &c. be read, and proclamation be thereupon made accordingly.

2 Then may he read, or cauſe to be read the Writ, or may declare the effect thereof.

3 Then let three other *Oyes* be made; and thereupon make proclamation againe, as followeth.

Fitz.

His Majeſties ſaid Iuſtice, doth in his Highneſſe Name, and by vertue of his

Majeſties Writ, ſtraightly charge and command, that no manner of perſon, of what eſtate, degree, or condition ſoever, now being within the houſe of B. &c. (named in the ſaid Writ) ſhall goe armed, or keepe force of armour or weapon, nor doe any thing there, or elſewhere, in diſturbance of his Majeſties Peace, or in offence of the Statute made at Northampton, in the ſecond yeare of K. Ed. 3. *upon paine of loſing his ſaid armour and weapons, and of impriſoning his body at his Majeſties pleaſure.*

God ſave the King.

4 Then the Juſtice of Peace may enter, and ſearch whether there be any force of armour or weapon worn or borne, againſt this Proclamation: otherwiſe he may enquire thereof by a Jurie (for ſo the Writ it ſelfe doth warrant him:) and if after Proclamation any ſuch offenders be found, hee ought to impriſon the offenders, and to ſeize to the Kings uſe, and preiſe (by the oaths of ſome preſent) the armour and weapons ſo found with them; and the offenders ſo impriſoned, are to remaine in priſon untill that ſome other commandement be given concerning them from his Majeſty, or his Iuſtices. See the Writ, *Fitz.* 249. and the title, *Bailment, poſtea.*

But if upon the Proclamation made, they doe depart in peaceable manner, then hath the Juſtice no Warrant by the Writ, to commit them to priſon, nor to take away their armour.

But when the Juſtice hath removed the force (upon this Writ) he may not put the partie that was put out, in poſſeſſion againe; for if he doe, it ſeemeth both the Juſtice, and the partie alſo, are puniſhable in the Star-Chamber: for the writ doth authorize the Iuſtice only to remove the force and not to make reſtitution. Cromp. 74. 102.

The forme of this Writ upon the ſtatute of Northampton, you may ſee in *Fitz. N.B.* 249.

The forme of certificate, or returne, into the Chancerie, of this Writ, ſee in the other title, *Forcible Entrie, cap.* 129.

Without Writ. Alſo every Juſtice of Peace (*ex officio*, and without any Writ) may doe execution of this ſtatute of Northampton, and that as well by force of the Commiſſion, as alſo of the ſaid ſtatute. 2. Ed. 3. 3. P. Armour. 2.

The manner to execute this ſtatute, by the Juſtice of Peace (*ex officio*) ſeemeth to be all one, as before, where hee hath a Writ delivered him; ſaving that when hee doth this *ex officio*, and without Writ, hee needeth not to make any Proclamation, nor to ſend any Certificate into the Chancerie; but the Juſtice may goe to the place where the force is, and (if it be in an houſe) he may enter, and ſearch, if any force of armour or weapon, bee worne or borne againſt this ſtatute; and if any ſuch offenders bee found, he may commit them to priſon, and may ſeize and preiſe the Armour and Weapon ſo found with them; and hee ought to record all that which he ſhall doe in this behalfe, and thereout to ſend ſome Eſtreat into the Eſchequer, that the King may bee anſwered of the Armour, or of the value thereof. Lamb. 176.

But here againe the Iuſtice muſt not make any reſtitution of the poſſeſſion to the partie ouſted, but muſt only remove the force.

And concerning the offenders ſo found, and committed by the ſaid Iuſtice

Compl. Lamb. 1701 554. Iuſtice of Peace, it ſeemeth the Iuſtice (at his diſcretion) may fine them, and upon payment thereof, or upon ſureties found for the ſame, that the ſaid Iuſtice may deliver the offenders, even as in the former ſtatutes of 15. *R. 2.* & 2. *H. 6.* Or elſe the ſaid Iuſtice may record ſuch force, and commit the offenders, and after certifie the Record into the Kings Bench, or to the Iuſtices of Gaole delivery, or to the generall Seſſions of the Peace; as here in this title a little before.

Games unlawfull. CAP. 23.

1. Caroli 1. THere ſhall be no meeting of people out of their owne Pariſhes on the Lords Day (or Sunday) for any ſport or paſtimes whatſoever: nor any Beare-baiting, Bull-baiting, Enterludes, common Playes, or other unlawfull exerciſes of paſtimes, uſed by any within their own pariſhes, upon paine that everie perſon offending in any the premiſſes, doe forfeit for everie offence three ſhillings foure pence, to be imployed to the uſe of the poore of the ſame pariſh where the offence ſhall bee committed. And any one Iuſtice of peace of the Countie (or the chiefe Officer of any Citie, Borough, or Town Corporate) upon his or their view or confeſſion of the partie, or proofe of any one witneſſe by Oath, ſhall give warrant under his hand and Seale, to the Conſtables or Church-wardens of the pariſh where the offence ſhall be committed, to levie the ſaid penaltie by diſtreſſe, and ſale of the offenders goods (rendring them the overplus:) and in default of diſtreſſe, the offenders to be ſet in the Stocks by the ſpace of three houres. Provided that none be impeached by this Act, except he be called in queſtion within one moneth next after the ſaid offence committed, 1 *Caroli Regis, cap.* 1. & 3 *Caroli cap.* 4.

King *James* of happy memory, *Anno Domini* 1618. publikely declared to his Subjects, theſe recreations or exerciſes here under mentioned to be lawfull; that is to ſay, Dancing of men or women, Archery, Leaping, Vaulting, May-games, Whitſon Ales, Moriſ-dances, and ſetting up May-poles, and other ſports therewith uſed. And commanded that no ſuch honeſt mirth or recreation ſhould be forbidden to his Subjects upon the Sunday or holy dayes after divine Service (*ſc.* Evening Prayer) ended: Reſtraining and barring notwithſtanding from this libertie all Recuſants, and all ſuch as abſent themſelves from Church upon thoſe dayes: Commanding each Pariſh by it ſelfe to uſe theſe Recreations, and only after Evening Prayer ended. And prohibiting all unlawfull games to bee uſed upon Sunday, as Beare-baiting, Bul-baiting, Enterludes, and Bowling by the meaner ſort.

All which our now gracious Soveraigne King *Charles*, by publike Declaration, *Anno Domini* 1633. hath confirmed, allowing further the Feaſts of the Dedication of Churches commonly called Wakes, and all manlike Exerciſes to bee there uſed with all freedome, yet ſo as none bring any weapons thither. Commanding all Iuſtices of Peace to looke that no diſorders bee at ſuch Wakes, but to bee prevented or puniſhed, &c.

Every Iuſtice of Peace may from time to time (as well within Liberties, as without) enter into any common houſe or place, where any playing at Dice, Tables, Cards, Bowles, Coyts, Cailes, Legats, Shove groat, Tennis, caſting the ſtone, Foot-ball, or other unlawfull game, now invented, or hereafter to be invented, ſhall be ſuſpected to be uſed, and may arreſt the keepers of ſuch places, and impriſon them, till they find ſureties by Recognizance, no longer to occupy any ſuch houſe, play, game, alley, or place. 33 H.8.9. 1 Iac.c.4. Players 5. 1. 2 & 3 P. & M. c. 9. Lamb. 196

Alſo he may arreſt and impriſon (without baile) the players, till they be bound by themſelves, or with ſureties, by Recognizance to the Kings uſe, no more to play at, or haunt to any of the ſaid places, or games, *ibid.*

The ſaid ſtatute of 33. H. 8. prohibiteth all manner of perſons, to play at any unlawfull game, in any common houſe, alley, or place, except the keeper of ſuch houſe, or place, have a Placard, containing what games ſhall there be uſed, as alſo what perſons ſhall play thereat; and then ſuch perſons may play there, &c. 1 Caroli

Alſo the ſaid ſtatute prohibiteth all Artificers, Husbandmen, Labourers, Mariners, Fiſhermen, and Watermen, and all Apprentices and Servants whatſoever, to play at any unlawfull game, in any place, or at any time, except in Chriſtmas time only, and in their houſes, or ſervants in their Maſters houſes, and by their Maſters licence, Or Serving-men within the precinct of their Maſters Houſe, Garden, or Orchard, and by their Maſters licence. Alſo no manner of perſon ſhall at any time play at any Bowles, in any open places, out of his Garden or Orchard. P. 4.

Every Iuſtice of Peace finding or knowing any perſon to exerciſe or uſe any of the aforenamed unlawfull games (contrary to this ſtatute of 33. *H. 8. cap.* 9.) may commit him to ward, there to remaine without baile, untill he become bound (in ſuch ſumme of money as the ſaid Iuſtice ſhall thinke reaſonable in his diſcretion) that he ſhall not from hencefoorth uſe ſuch unlawfull games, *ibid.*

Although theſe games aforenamed, are by ſtatute prohibited, as unlawfull for ſome places, perſons, and times, yet are they not unlawfull or evill of themſelves, but are matters of recreation and pleaſure (though ſome of them more vaine and more idle then others) and the King by his Prerogative, may tolerate and licence the moderate uſe of all ſuch games, as it ſhall ſeeme good to his Majeſty, *Co. 1. 3. b.*

Note alſo, that playing at Cards, Dice, and the like, are not prohibited by the Common Lawes of this Realme (except that one be deceived by falſe Dice, or falſe Cards, and then hee that is deceived may have his Action of the caſe for ſuch deceit:) neither are they *malum in ſe*, or of their owne natures, for then none might be tolerated or licenced to uſe them; whereas the ſtatute doth except and tolerate certaine perſons, places, and times. And yet good Divines doe hold divers of theſe Recreations to be altogether unlawfull, as being actions wherein we neither bleſſe God, nor looke to receive a bleſſing from God; nay, ſuch as we dare not pray to God for a bleſſing on them, nor on our ſelves in the uſe thereof. But eſpecially on the Sabbath day, all ſuch Recreations and Games are holden unlawfull; for if lawfull workes be forbidden on that

day,

day, much more unlawfull ſports (yea, ſuch ſports and games, which otherwiſe, and at other times are lawfull.) See *Eſſey* 58. 13.

Gunnes. CAP. 24.

Dyer 254. Co. 11. 87. 33. H. 8. 6. a Co. 5. 72. P. 1, 2, 6.

WHoſoever ſhall ſhoot in, carrie, keepe, uſe, or have in his houſe or elſewhere, any Guns, Croſſebowes, (a Dags, Piſtols, or Stonebowes) contrary to the ſtatute of 33. *H.* 8. 6. Every perſon ſeeing, or knowing this, may arreſt or attach the offenders, and bring or convey them to the next Iuſtice of Peace in the ſame Countie (where they were found offending) which Iuſtice upon due examination and prooſe thereof before him had, or made, by his diſcretion, may commit the offenders to the Gaole, there to remaine untill they have paid the penaltie of the ſtatute, *ſc.* x. li. *Out Iuſtice.*

The effect and particulars of which ſtatute, be as followeth:

P. 1. Co. 5. 72. 1 No perſon may ſhoot in, or keepe, any Gun, Dag, Piſtoll, Croſſebow or Stonebow, except he hath *per annum*, 100. li. in lands, tenements, fees, annuities, or offices.

P. 2. b Co. 5. 72. 2 No perſon may ſhoot in, carrie, keepe, uſe or have any Hand-gun under one whole yard in length, nor any other Gun, (a Dag, or Piſtoll) that ſhall be under three quarters of a yard in length.

Every perſon having in land, &c. 100. li. *per annum*, may ſeiſe and take from the offender, every Gun, (Dag, and Piſtoll) ſhorter then is before limited, and every Croſſebow (or Stonebow) from him that hath not 100. li. *per annum*: and may keepe ſuch Bow, but muſt breake ſuch Guns within twentie dayes next after ſuch ſeiſure.

But now by the ſtatute made 3. *Iacobi Regis cap.* 13. if any perſon, not having lands, &c. of the yeerly value of fortie pounds, or not worth in goods two hundred pounds, ſhall uſe any Gun, Bow, or Croſſebow, to kill any Deere or Conies, or ſhall keepe any Buckſtall or Engine, Hayes, Gate-Nets, Purſe-nets, Ferrets, or Coney-dogs (except ſuch perſon ſhall have any ground incloſed, uſed for the keeping of Deere, or Conies, &c. or be Keepers, or Warriners) any perſon having in Lands an hundred pounds by the yeere, in fee, or for life, may take from ſuch malefactors, and to his owne uſe for ever keepe, ſuch Guns, Bowes, Croſſebowes, Buckſtals, or Engine, Hayes, Gate-nets, Purſe-nets, Ferrets, and Coney-dogs.

P. 3. Lamb. 461. 3 No perſon may cary in his journey, any Gun (Dag, or Piſtoll) charged, or Bow bent (but onely in time and ſervice of war, or in going to or from Muſters (except he hath *per annum* 100. li. in Lands, &c.)

P. 4. 4 No perſon may ſhoot in any Gun, &c. within any Citie, Borough, or Market-towne; nor within one quarter of a mile of any Citie, Borough, or Market-towne, except for the defence of his perſon, or houſe; or at a but or banke of earth, and in a place convenient.

P. 4.

P. 5. 5 The Maſter may not command his ſervant to ſhoot in any Gun, or Croſſebow, &c. except at but or banke of earth, or in time of War.

P. 9, 13. Except notwithſtanding out of this ſtatute, ſhooting at butt or banke

of earth, by Serving-men (whoſe Maſters are enabled by ſtatute) and by inhabitants of Cities, Boroughs, and Market-townes; except alſo all Lords, Knights, Eſquires, and Gentlemen, and the inhabitants of every Citie, Borough, and Market-towne, as alſo all perſons dwelling alone, or neere the Sea, and makers and ſellers of Guns, &c. theſe may keepe Guns, &c. of the length aforeſaid, in their houſes (yet onely to uſe, and ſhoot therein, at a Butt, or Banke of earth:) and perſons having lawfull placards, they may ſhoot according to ſuch placard or licence. See other exceptions there.

But for as much as in theſe former caſes the Juſtice of peace hath the whole matter committed to himſelfe, and that ſuch offenders remain convict upon his examination, and proofe of witneſſe made before him, therefore he ought to be circumſpect in his examination, as alſo in his *Mittimus:* and further, to make a Record of the matter (in writing under his hand) and alſo to ſend the Eſtreat of it into the Eſchequer, whereby the Kings dutie may be levied. Lamb. 191.

The forme of ſuch *Mittimus, vide hic cap.* 126.

The forme of the Record, ſee there alſo.

All perſons which ſhoot in Guns (whether they be authorized to ſhoot, or otherwiſe) ought to preſent their names to the next Iuſtice of peace, and ſuch Juſtice ſhall cauſe the Clerke of the Peace to record or regiſter their names; but *quere* if this be now in uſe, *Lamb.* 196. 2 H. 6. 14. P. 21.

Two Iuſtices. Any two Iuſtices of peace may commit to the Goal for three moneths, &c. everie ſuch perſon as ſhall ſhoot with any Gun, or Bow, at any Partridge, Feſant, Houſe-dove, Mallard, or ſuch Fowle, or at any Hare. See more in the title *Partridges.* 1. Iac. 27. P. Felons 8.

But note that the Sheriffe, or any of his Officers, for the better executing of their Office, may carrie with them Hand-guns, Dags, or other weapons, (invaſive or defenſive) notwithſtanding the ſtatute of 33. *H.* 8. *cap.* 6. *Co.* 5. *fol.* 72

Hawking. Cap. 25.

EVerie Iuſtice of peace may examine the offences, for Hawking or Hunting with Spaniels in eared or codded corne, and may binde the offenders with good Sureties to appeare at the next generall Seſſions of the peace to anſwer their ſaid offences, 23 *Eliz.* 10. It ſeemeth requiſite alſo that the Iuſtice doe binde over the witneſſes, which ſhall diſcover the offence. P. Felons 6. P. Iuſt. 31.

Againſt Hawking at Feaſant or Partridge betweene the firſt day of July, and laſt of Auguſt: See 7 *Iac.* 11. *hic titulo Partridges.*

Hawkes that be found ſhall be delivered to the Sheriffe, *Vide titul. Felonies by ſtatute.*

Hawkes, where the taking or concealing them, is Felonie: See there alſo.

High-

High-wayes. Cap. 26.

Co. l. 56. NOte that there are three kind of waies, *ſc.*

1 A Foot-way, called *Iter, quod eſt jus eundi vel ambulandi hominis.*

2 A Foot-way and Horſe-way, called *Actus ab agendo*, and this vulgarly is called a pack or Drift-way, and is both a Foot-way and Horſe-way.

3 The third a Cart-way, &c. called *Via*, or *Aditus* (and containeth the other two, and alſo a Cart-way) for this is *Ius eundi, vehendi, & vehiculum & jumentum ducendi*: And this is two-fold.

Viz. { *Via Regia*, the Kings high-way for all men: with this onely the Iuſtices of peace are here to meddle. *Communis Strata*, belonging to a Citie or Towne, or betweene Neighbours.

13 E. 2. f. 18. See poſtea tit. Robberie. Everie Iuſtice of peace may cauſe the high-waies to Markets to be enlarged, and clenſed of buſhes and trees (ſo that there bee neither buſh, wood, nor tree, within two hundred foot of either ſide of the way: the ſtat. 13. *E.* 1. excepteth Aſhes, and great trees, but by the ſtatute 5 *El.* all trees therein are to be cut downe) &c. And this the Iuſtice of peace may doe by force of the Commiſſion, the firſt *Aſſignavimus* (*Lamb.* 190.) but how the Iuſtice ſhall compell the ſame to be done, I ſee not otherwiſe then by admonition, and if that be not obeyed, then to preſent it, or cauſe it to be preſented at the Quarter Seſſions, &c. *Vide tit. Commiſſion of the Peace.* *One Iuſtice*

Alſo by the Articles of Inquiſition upon the ſtatute of Wincheſter, (made about 24. *E.* 1.) It is appointed that if theſe high-wayes bee not enlarged accordingly, enquirie ſhall be made where the waies be, who ought to enlarge them, and of ſuch as doe hinder ſuch enlargements, as well in Parks, as in other Woods. See *Poultons Statutes at large, fol.* 93.

5. Eliz. 13. P. Iuſt. 69. Cromp. 131. Everie Iuſtice of peace (upon his owne knowledge) may preſent in open generall Seſſions, any High-way not ſufficiently repaired, and amended, within the Countie and limits of his Commiſſion.

5. Eliz. 13. Cromp. 131. Everie Iuſtice of peace (upon his own knowledge) may preſent in open generall Seſſions, any other default or offence committed (within the Countie and limits of his Commiſſion) contrarie to the ſtatutes of 2. & 3 *P. & M.* 8. & 5. *Eliz. cap.* 13. concerning the amendment of High-wayes: and every ſuch preſentment ſhal be of the force of a preſentment of twelve men (*ſc.* ſhall be a good Indictment againſt the offenders.) So that upon ſuch preſentment, the Iuſtices at the ſaid Seſſions may aſſeſſe the fine upon ſuch offenders, and that in the abſence of the party, and without calling them to it by any proceſſe (ſaving to every offender their lawfull Traverſe) *ibidem.*

So that every Iuſtice of peace may preſent, as aforeſaid, all and every theſe defaults following, being all contrary to the ſaid ſtatutes, &c.

1. & 3. P. & M. cap. 8. 5. Eliz. 13. 20 Eliz. 5. P. 2. 1. IF the Conſtables and Church-wardens of every pariſh yeerely upon the Tueſday, or Wedneſday in Eaſter-weeke doe not call together

ther the parishioners, & do not then also chuse Surveyors, for the amending of High-wayes in their Parish leading to Market-townes, according to the statutes, 2. *P. & M.*

2 If six dayes be not by the Constables, and Church-wardens then so appointed for that purpose, and to be before Midsummer following, 2. *P. & M. & 5 Eliz.* P. 2.

3 If notice of the said daies be not given the Sunday after Easter openly in the Church, by the Constables and Church-wardens. 2. P. & M.

4 If every person having in his occupation, a Ploughland in Tillage or Pasture in the same Parish, or keeping there a Plough, or a Draught, doe not send at every day and place appointed, &c. for every Draught, or Plough-land in Tillage or pasture, one Cart furnished with necessary tools, and two able men with the same: and that they doe such workes as they shall be appointed (by the Surveyors) by the space of eight houres, every of the said six daies. P. 24. Rast. 199. Lamb. 459. 2. P. & M.

But by the statute 18 *Eliz.* 9. hee that shall occupie a Plough-land in tillage or pasture, lying in severall Parishes, shall be chargeable only in the Parish where he dwelleth: and hee that occupieth severall Plough-lands aforesaid, in severall Parishes, shall be charged in each Towne or Parish where such Land lieth: *sc.* to find in each Towne or parish, one Cart furnished as aforesaid. P. 13. 14.

5 If any of the carriages shall not be thought needfull by the Surveyors upon any the said daies, if then everie such person shall not send two able men for every cart of theirs so spared, 2. *P. & M.* P. 3.

6 If everie other Housholder, Cottager, or Labourer (able to labour, and being no hired servant by the yeere) doe not by himselfe, or one sufficient Labourer, worke everie of the said sixe daies by the space of eight houres, as they shall be appointed by the Surveyors, 2. *P. & M.* P. 3.

A Cottage, one describeth to be, *Casa rustica ex leviori materia excitata, arundine aut ulva palustri tecta. Minsh.*

And he is a Cottager that dwelleth in such Cottage or House, without Land belonging to it, 4. *E.* 1. *Stat.* 1.

7 Note that all persons being chargeable but as Cottagers, yet if they be in the Subsidie v. li. in goods, or xl. s. in lands, or above; they shall find two able men to worke everie of the said six daies (by the stat. 18. *El. c.* 9.) But it seemeth the Iustice cannot present such default upon his owne knowledge. P. 12.

8 If all fences, hedges, and ditches, next adjoyning on either side any High-way, be not from time to time diked, scoured, repaired, and kept low by the owners of the ground, 5 *El. &* 18. 9. P. 9.

9 If all trees and bushes growing in the High-waies, be not cut downe by the Owners, 5. *El.*

Note, that the Kings High-way (or *Regia via*) leading either to the Market, or from Towne to Towne, the Freehold, and soile thereof, and the interest of all the trees, and other such profits thereupon growing, doe belong to the Lord of the soile, or the Lord of the Mannor, 17. *Ed.* 3. *fol.* 43. *&* 8. *E.* 4. *fol.* 9. *Br. Chemin.* 10, 11. *&* 27. *H.* 6. *fol.* 9. *Br. Leet.* 3. And therefore such Lords are chargeable to cut downe the Trees and Bushes

shes growing in such High-wayes: and yet by the opinion of *Rolle*, 8. *H.* 7. *fol.* 5. the Free-hold of the High-way, and the trees thereupon growing, are belonging to him (*sc.* to any Free-holder) that hath the land next adjoyning, *Br. Nusance* 28. but it seemeth this must be understood of common Field-wayes, or other private wayes, and not of the Kings High-way. See 2. *Ed.* 4. *fol.* 9. & *Britton fol.* 111.

Note also, that he which hath land adjoyning next to the Kings High-way, by the Common Law (before these statutes) was and is chargeable and bound of common right, to cleanse and scoure the ditches adjoyning to the said way (*sc.* betweene his Land, and the High-way.) 8. *H.* 7. *fol.* 5. *a. Br. Nusance* 28.

At Lent Assises at Cambridge, *Anno* 1622. Sir *Iames Ley* delivered it in his charge, that if any person hath made, or shall make, any inclosure next the Kings High-way, that such person shall be charged to amend the High-way adoyning to his said inclosure. And if one man hath inclosed on the one side or part, and another man on the other side, they shall be both charged to amend the same way.

Otherwise, High-wayes must be sufficiently amended at the Charge of the whole Towne. And it is not enough for the Inhabitants to doe their full six dayes worke yeerely, except their wayes be all well and sufficiently repaired. For if all their said wayes be not sufficiently amended, the whole Towne may be indicted therefore.

Because every Towne regularly is to maintaine and amend the High-wayes within their owne Parish, except it can be proved to have beene usually amended by any other person, or Towne, or by the Hundred, or Country, &c. And therefore if sixe dayes worke in the yeere will not serve to amend them, the Surveyors may, yea must appoint moe dayes, &c.

Also concerning the Causey (neere Cambridge) called Doctor *Harveys* Causey, towards the repaire whereof Doctor *Harvey* hath given eight pounds *per annum* (payable by the Master and Fellowes of Trinitie Hall in Cambridge) Sir *Iames Ley* said, that if this 8 *li. per annum*, were not sufficient to repaire the said Causey, that then the Towns adjoyning, within which that Causey or way doth lie, ought to helpe to repaire the same.

It is called the Kings High-way, for that the King at all times, hath therein passage for himselfe and all his people, and may punish all Nusances therein; though otherwise the interest thereof be in the Lord, to take all the Trees and such other profits there growing, and to bring his action for digging therein, or for any other like trespasse there done.

Fitz. N. Br. 115. a. And the King (by the Common Law) may award his Commission for the amending of the High-wayes and Bridges thorowout his Realme, so as his people may have safe passage thereby.

P. 1. 10 If any chosen to be Surveyor, shall refuse the office, or will not take upon him the execution thereof, 2. *P. & M.* every Justice of Peace may present this as aforesaid.

P. 1. 11 So if the Surveyors shal not within one moneth after any of the former offences committed, present every such offence to the next Justice of Peace, &c.

12 Also

12. Alſo if the Bailiffe, or high Conſtable (who hath received an Eſtreat for the levying of any forfeiture upon theſe ſtatutes ſhall not levie the ſame; or ſhall not (betweene the firſt day of March and laſt of April, yeerly) make a true account, and payments of all ſuch ſummes as hee hath levied, to the Conſtables and Church-wardens of every Pariſh wherein the offence was committed; or if the Conſtables and Church-wardens have not imployed the ſame upon their High-wayes: it ſeemeth every Iuſtice of Peace may (upon their owne knowledge) preſent every of theſe defaults, as aforeſaid. P. 10. Raſt. 599. c. 2. P. & M.

And if the Surveyors ſhall preſent any of the former offences (by them to be preſented) to the next Iuſtice of Peace, within one moneth next after the offence committed; the ſame Iuſtice ought to certifie ſuch preſentment, at the next generall Seſſions, *ſub pœna*, v. li. But if the Surveyors doe not make their preſentment to the Iuſtice till after the moneth, and the Iuſtice certifieth it, this ſeemeth not good againſt the offenders. P. 3.

The Surveyors auberitie.

Every ſuch Surveyor (for the better amendment of the wayes within the Pariſh) may by their diſcretion take and carry away the rubbiſh, or ſmalleſt broken ſtones of any Quarrie within their Pariſh, *ſc.* ſuch rubbiſh as they ſhall find there readie digged, by the owners of the ſaid Quarry, or otherwiſe by their licence. 5. Eliz. 13. P. 5.

Every ſuch Surveyor may alſo (for the uſe aforeſaid) dig for, and take, or cauſe to be digged for, and taken (in the ſeverall grounds of any perſon within that Pariſh, neere adjoyning to the way to be amended) any Gravell or Sand; ſo as they dig in no mans Garden, Orchard, or Meddow, and but one onely pit, and not above ten yards over at the moſt, and the ſame within one moneth to be filled up againe with earth, at the charge of the Pariſh. Ibid.

Every ſuch Surveyor may likewiſe cauſe ſtones to be gathered upon any mans ground within the Pariſh and the ſame to carrie away for the uſe aforeſaid. Ibid.

Every ſuch Surveyor may cauſe any Water-courſe, or ſpring of water (being in the High-way within their Pariſh) to bee turned into another mans ſeverall Ditch (or ground) next adjoyning to the ſaid way, in ſuch manner as by the diſcretion of the ſaid Surveyor ſhall bee thought meet. P. 6.

Two Iuſtices.

Alſo any two Iuſtices of Peace (the one being of the *Quorum*) upon complaint to them made by the Church-wardens of any Pariſh, may convent before them the Bailiffe and high Conſtables (to whom the Clerke of the Peace, or Steward of any Leet hath delivered any Eſtreats for the collecting of the fines, forfeitures, and amerciaments for the defaults aforeſaid) and may take their accounts; and may compell them to pay all ſuch arerages, as they ſhall adjudge to the Conſtables and Churchwardens of the Pariſh where the offence was committed; or may impriſon them untill they have payed ſuch arerages. P. 11. 2. P. & M.

Everie Bailiffe and high Conſtable upon their ſaid accounts ſhall have allowed for every pound he ſhall collect and pay, 2. d. for his owne paines, and 12. d. for the fee for the Eſtreat delivered him. P. 11.

Alſo it ſeemeth any two ſuch Iuſtices of Peace upon complaint to them

them made by the ſucceeding Church-wardens, or Conſtables, may con-
Ibid. vent before them the precedent Conſtables and Church-wardens, and may take their accounts, and may compell them (as aforeſaid) to pay all arerages in their hands, 2. P. & M. 8.

2 P. & M. Note that all ſuch fines or forfeitures ariſing in the Seſſions, ſhall be levied by Eſtreats indented, made by the Clerke of the Peace; who ſhall ſeale and ſigne ſuch Eſtreats, and ſhall deliver the one part thereof ſo ſealed and ſigned, to the Bailiffe or high Conſtable of the ſame Hundred; and the other part thereof to the Conſtables or Church-wardens of the Pariſh where ſuch default was made; and to be delivered by the Clerke of the Peace within ſix weeks after Michaelmas yeerely: the which Eſtreats ſhall be a ſufficient Warrant to the ſaid Bailiffe or high Conſtable, to levie ſuch fines and forfeitures by diſtreſſe; and all ſuch fines and forfeitures ſhall be beſtowed by the Church-wardens on the High-wayes in the ſame Pariſh.

2.19. Alſo, two Iuſtices of Peace (by the ſtatute 18. *El.*) may take the account of the Surveyors of the wayes, and of the pettie Conſtables and Church-wardens, for all ſuch forfeitures (within that ſtatute) as they have levied, 18. *El. cap.* 10.

Here I thought good to moove ſome doubts that have aroſe upon the former ſtatutes, and deſire that ſome reſolution may hereafter be given, for better ſatisfaction, for that they be ſo ordinarily queſtioned.

Co. 9. 124. Co. L. 69. What, and how much a plough-land is, Sir *Ed. Coke* in his ninth Part, in *Lowes* caſe and upon *Littleton*, telleth us, and ſaith, That a Carve, or Hyde of Land (or a Plough-land) which is all one, is not of any certaine content, but ſo much as one Plough may plow in one yeere; and ſo in ſome Countrie it is more, and ſome other it is leſſe (according to the heavineſſe of their ſoile) and herewith agreeth M. *Lambard*, *verbo Hyde*. *A Plough-land.*

33. H. 6. And of the ſame opinion was Iudge *Priſot* 35. *H.* 6. 29. where hee ſaith, that a Carve of Land is greater in one Countrie, then in another, for that a Plough may plough more Land in the yeere in ſome Countrie then in another.

And yet ſome others doe make a difference between an Hyde of Land, and a Carve, or Plough-land: for they ſay, that an Hyde of Land doth contain foure plough-lands, *ſc.* 480. Acres; whereas a Carve, or Plow-land containeth but ſixſcore Acres: and every Plough-land or Carve, is foure yard Land (in Latine called *Quatrona terræ*) every yard Land containing 30. Acres. But a Plough-land, or Carve of Land, is called in Latine *Carucata terræ*, that is, *quantum aratrum arare poteſt in æſtivo tempore*: for which ſee M. *Skene*, *Minſh.* and the Surveyors Dialogue made by *Iohn Norden*, *pag.* 59. And ſo this definition or deſcription of *Carucata terræ*, ſheweth that it is not of any certaine content.

Co. 4. 37. b. & 9 124. Alſo a Carve of Land (or a Plough-land) may containe Houſe, Meadow, Paſture, and Wood. *Co. L.* 69.

1 Now a man with one Plough and five or ſix horſes will occupy, plough, and dreſſe 7. or 8. ſcore Acres of arable Land yeerely (as many doe with us in the Eaſt parts of Cambridgeſhire) and will in Summer goe uſually with two Draughts or Carts; yet ſuch perſon is uſually charged to the amending

amending of the High-wayes, but with one Cart furniſhed. And another man dwelling in the ſame Towne, and occupieth but 40. or 50. Acres, or not ſo much, and keepeth but three horſes, and one draught or Cart, and he likewiſe is uſually charged, as the former, with one Cart furniſhed; whether ſhould their two charge for cariages for the High-wayes be all alike? For mine owne opinion, I thinke it both reaſonable, and warranted by the words of the ſtatute, that he that for his owne private buſineſſe, ſhall uſually make and ſet up two draughts or carts, ſhall alſo for the King and Countries ſervices, be chargeable with two draughts or carts, though he occupy all his land but with one plough.

2. Againe, what a Draught for cariage ſhall be, *ſc.* with how many horſes? and whether he that keepeth but two horſes and a cart (as many with us doe) be chargeable or no? I find that a draught for the Kings cariages heretofore, hath beene ſometimes with two horſes, as it ſeemeth by the ſtatute of *Mag. Charta, cap.* 21 (the words of the ſtatute be, No Sheriffe, &c. ſhall take the horſes or carts of any perſon, for cariage, except hee pay for one cart with two horſes, ten pence by the day, and for a cart with three horſes, fourteene pence by the day:) and therefore I ſhould thinke him that uſually goeth to cart (for his owne buſineſſe) with two horſes to be chargeable to find a cart and two horſes for the amending of the High-wayes, and to carry ſuch loads as his two horſes are well able to draw.

3 Againe, if one occupieth a plough-land in paſture, *viz.* ſix or eight ſcore Acres or more, of paſture for feeding of cattell, but keepeth neither Cart nor plough, how ſhall hee bee charged to find a cart or draught that keepeth none; and yet the words of the ſtatute, 2. & 3. *Phil. & M.* & 18. *Eliz.* 9. doe expreſly charge him, See *hic antea*, the words of theſe two ſtatutes.

4 Againe, he that ſhall keepe a Draught for cariage, or a plough, though hee occupieth little or no Land, or paſture in his owne hands, but onely carteth or plougheth for other men, whether he is not chargeable to find a cart for the amending of the High-wayes? It ſeemeth he is: But *quære* whether he be chargeable to find two able men with his cart, * except he hath in his occupation a Plough-land: perhaps alſo hee keepeth never a man. * P. 2.

There be alſo certaine particular Statutes concerning *High-wayes, as followeth.*

One Iuſtice THe Occupier of any Iron-works, for every three loads of cole, or Mine, and alſo for every tun of Iron that he ſhal cauſe to be carried in the Winter-time, by the ſpace of one mile, in the High-wayes within the Weilds of Suſſex, Surrey, or Kent, ſhall pay to the Iuſtice of Peace dwelling neer to the places in that County, where the High-wayes ſhall be moſt annoyed, or to his Aſſignes, three ſhillings in money; the ſame (in default of payment) to be levied by diſtreſſe, by ſuch Iuſtice or his Aſſignes, of the goods of the party in the ſaid County. 32. El. 19. §. 19.

Alſo ſuch Occupier, for every thirty loads of cole & mine, and for every ten tuns of Iron carried in the ſaid High-wayes, &c. ſhall lay one load §. 20.

of

of ſynder, gravell, ſtone or chalke, in places to bee appointed by ſuch Iuſtice, or elſe within eight dayes after demand, ſhall pay iii.s. for every ſuch load, to the hands of ſuch Iuſtice, who upon default of payment, ſhall levie the ſame by diſtreſſe, &c.

P. 22. The ſaid Iuſtice of Peace ſhall beſtow all ſuch ſummes of money upon the amending the ſame High-waies, at his diſcretion.

Two Iuſtices.

29 El. 19. P. 22. Two Iuſtices of Peace (whereof one to bee of the *Quorum*) which were preſent at the Seſſions; wherein any perſon was convicted for any offence againſt the Statute of 39. *El.* may make Warrant for levying the forfeits thereof, to any Conſtable or other Officer: and they may alſo appoint ſuch wayes and meanes as they ſhall thinke meet, to levy the double ſummes for not paying thoſe forfeits within xx. dayes next after lawfull demand of the ſame by ſuch officer.

14. H. 8. ca. 26. H. 8. c. 7. By the aſſent of two Iuſtices of the Peace, and twelve diſcreet men of the Hundred and Hundreds adjoyning, any perſon may make and lay out, in & over his owne land in Fee ſimple, in the Weild of Kent, as alſo in the county of Suſſex, a new High-way more commodious then the old; and in ſtead thereof may retaine the ground of the old way in ſeveralty to him and his heires: and the ſame Iuſtices and twelve men, ſhall within three moneths certifie under their ſeales, ſuch new way into the Chancery, *ſc.* the length and bredth of the ſame new way, and other things adjoyning or concerning the ſame, according to their diſcretion.

See more of the High wayes, *tit. Bridges.*

Horſe. CAP. 27.

EVery Iuſtice of Peace (after ſale made in open Faire or Market, of any ſtolen horſe, &c.) at any time within ſix moneths next after the ſaid * ſale, (or rather next after the felonie done) may take and hear the claime, and proofe of the right owner, (from whom the ſame was ſtollen, or of his Executors or Adminiſtrators, or other perſon by their appointment) which proofe muſt bee by two ſufficient witneſſes upon oath, to bee made within forty dayes next inſuing ſuch claime. 31. *Eliz. cap.* 12.

* Lamb 205 See the Stat.

P. Faires 8. 31. El. 12. Alſo the ſame Iuſtice of Peace may miniſter an oath to the party that bought the ſaid horſe, or that hath the poſſeſſion and intereſt of the ſame horſe, what money hee paid for the ſame *bona fide*, ſo as the right owner repaying the ſame, may have his ſaid horſe againe, *ibid.*

Note that in every Faire or Market, where any Horſes, Geldings, Mares, or Colts are to be ſold, there ought yeerely to be appointed out one certaine and ſpeciall open place where the ſaid horſes, &c. ſhall bee ſold: And one ſufficient perſon (or moe) to take toll, who ſhall continue in the ſaid place, from the houre of ten before Noone, untill Sun-ſetting, every day of the foreſaid Faire 2. & 3. *P. & M. cap.* 7.

2. & 3. P. & Mar. 7. 31. El. 12. P. 5. & 7. Alſo note, that every ſale, or other putting away, in any Faire or Market, of any ſtolen horſe, &c. not being according to the Statute in every point (*ſc.* in every of theſe particulars following, as it ſeemeth) is void,

to alter or take away the property of the owner, from whom ſuch horſe was ſtolen. *&c.*

1. If the horſe be not, in the time of the ſaid Faire or Market between ten of the Clock and Sun-ſetting, one houre together (at the leaſt) in the open place of the Faire, &c. where horſes are commonly ſold, 2. *P. & M.* the ſale is void, &c.

2. If all the parties to the bargaine (being in the Faire) ſhall not come together with the horſe, to the Book-keeper, to the open place appointed, 2. *P. & M.* the ſale is void, &c.

3. If the Book-keeper, Toll-taker, Baliffe, or other chiefe Officer of the ſame Faire or Market, ſhall not take perfect knowledge of the ſeller, or of the voucher, *ſcilicet*, of their true Chriſtian name, ſyr name, myſtery, and place of dwelling: Or ſhall not enter all the ſame into his Booke, the ſaile is void, &c. 31. Eliz.

4. If the voucher be not a ſufficient and credible perſon: Or if the voucher ſhall not know the ſeller indeed, or ſhall not truely declare to the Book-keeper, &c. the Chriſtian name, ſyr-name, myſterie, and place of dwelling, as well of himſelfe, as of the ſeller (as it ſeemeth) the ſale is void, &c. 31. Eliz.

5. If the Book-keeper, &c. ſhall not make entrie into his booke, of the true price, that the horſe is ſo ſold, with the colour and one ſpeciall marke at the leaſt, of the ſame Horſe, &c. 2. *P. & M.* & 31. *El.* the ſale is void, &c.

6. So if a true and perfect note in writing, of the name of the ſeller, or voucher, and of their dwelling, &c. and of the price, be not given to the buyer, by the Book-keeper, &c. and ſubſcribed with his hand. 31. Eliz.

7. And laſtly, if toll be not paid where toll is due; or the Book-keeper not paid for the entrie, &c. *Vide* 12. *E.* 4. *fol.* 8. *Cromp* 91. *Fi.* 45. 2. P. & M.

If the theefe which ſtealeth an horſe, ſhall ſell the ſame horſe in Market overt, or Faire by a falſe name, and that be ſo entred into the Toll-booke, ſuch miſnaming of the ſeller, maketh the ſale void againſt the right owner of the horſe. And this was the opinion of *Windham* and *Roods* Iuſtices (upon this Statute 2. & 3 *P. & M.*) *Anno* 30. *El.* in a caſe betweene *Gibs* Plaintiffe, againſt *Baſtel*; the caſe being thus: One *Potter* did ſteale the horſe of the Plaintiffe, and ſold him to the Defendant in Market overt, by the name of *Lyſter*, and ſo it was entred into the Toll-booke, that *Lyſter* ſold the horſe, whereas his name was *Potter*; whereupon *Gibs* the Plaintiffe brought his Action of the caſe *Sur trover*, againſt the Defendant *Baſtell*, &c.

Note alſo, that every contract for any ſtolen horſe, &c. made out of open Faires, in void, though they be after booked, *Dyer* 99.

Alſo, a ſale in a Faire or Market overt, ſhall not take away the owners property, where the buyer doth know that the property was to another man, or where the buyer knoweth that the horſe, or other goods, were ſtolen. See *poſtea tit. Reſtitution, cap.* 3. Co. 3. 78. 3. 7. H. 7. 12.

Alſo to alter the property of a ſtranger having right, horſes and all other goods, are to bee ſold in ſuch a place or ſhop, as is commonly uſed for the ſelling of goods of the ſame kinde, or nature. Co. 5. 83.

Alſo a ſale upon a Sunday, though in a Faire or Market overt, ſhall not bee a good ſale to alter the property of the goods: by *Brian*, 12. *E.* 4. *fol.* 1. *b.*

And indeed, Faires and Markets kept upon the Sabbath day, are prohibited by the Statute of 27. *H.* 6. *cap.* 5. And now by the Statutes, 1. *El. cap.* 2. & 3. *Iac. cap.* 4. All perſons reſorting upon the Sabbath day, to any Faire or Market, and by the meanes thereof abſenting themſelves from the Church, or not abiding at the Church orderly, during all the time of Prayer, Preaching, and other Divine Service, are to be punished by any one Juſtice of Peace, according to the forme of the ſaid Statute 3. *Iac.* (which ſee *His poſies titulo Recuſants*) or by the Ordinary or Biſhop of the Dioceſſe, by the Statute 1. *El.* Or otherwiſe the offender may be indicted (for ſuch his abſence from Church) at the Quarter Seſſions of the Peace, or generall Gaole delivery.

Alſo the Lord of ſuch a Faire or Market, kept upon the Sabbath day contrary to the ſtatute, may bee therefore indicted for the King, either at the Aſſiſes and generall Gaole delivery, or at the Quarter Seſſions of the Peace within that County, *Plus hic cap.* 46.

Huy and Crie. CAP. 28.

EVery Juſtice of Peace may cauſe Huy and Crie, freſh ſuit, and ſearch to be made, upon any murder, robbery, theft, or other felonie committed: and this bee may doe by force of the Commiſſion, the firſt *Aſſignavimus & Stat. Winch.* 13. *E.* 1. *cap.* 1.

Note that all Huy and Cries ought to bee made immediately after the felony done, from Towne to Towne, and from County to County, and by horſemen & footmen, otherwiſe it is no lawfull purſuit 28. *Ed.* 3. *cap.* 11. 27. *Eliz.* *P.* 19.

Note alſo, when Huy and Cry is levyed upon any robbery, or other felonie, the Officer of the Town where the felony was done (or Huy and Crie firſt levied) ought to ſend to every other Towne round about him, and not to one next Towne only: and in ſuch caſes it is needfull to give notice in writing (to the purſuers) of the things ſtollen, and of the colour and markes thereof, as alſo of the perſon of the Felon, his apparell and horſe, &c. if it may be.

Sir *Nicholas Hyde*, in his charge at Cambridge Aſſiſes in Lent, 1629. delivered, that Huy and Crie muſt bee made or purſued with horſe-men and foot-men, and that not onely a private ſearch is to bee made in every Towne, but that they muſt raiſe the Countrey as they goe, and all ſtill to follow the Huy and Crie, as againſt a Common enemie. *Plus hic. cap.* 109.

Alſo the Officers of every Towne to which Huy and Crie ſhall come, ought to ſearch in all ſuſpected houſes and places within their limits: And as well the Officers, as all other perſons which ſhall purſue the Huy and Cry, may attach and ſtay all ſuch perſons, as in their ſearch, or purſuit, they ſhall finde to bee ſuſpitious; and thereupon ſhall carry them before ſome Juſtice of Peace of the County where they are taken, to bee

examined where they were at the time when the felony was committed, &c.

See more of Huy and Cry in the title *Robbery* and *Felony*.

Hunting. Cap. 29.

VPon information given to any Iuſtice of Peace of the County where any unlawfull hunting of Deere or Conies (by night, or with painted faces, or other diſguiſing) in any Forreſt, Parke, or Warren, ſhall bee had, or any perſon ſuſpected thereof, that Iuſtice may make a Warrant to the Sheriffe, Conſtable, Bailiffe, or other Officer to take the party, and to bring him before him, or before any other Iuſtice of Peace of the ſame County, who may examine him of that hunting, and of the doers thereof: And if hee conceale that hunting, or any offender with him therin, then the ſame concealment ſhall be felony in ſuch concealer. But if he then confeſſe the truth of all that hee ſhall bee examined of, and knoweth in that behalfe; then his offence of hunting ſhall bee but Treſpaſſe, and finable: the fine to bee aſſeſſed at the next generall Seſſions of the Peace, by the Iuſtices there. See *poſt eat tit. Felony by Stat.* 1. H. 7. c. 7. P. Inſt. 16. Quere if they kill a thing.

Alſo to diſobey ſuch a warrant, or to make *Reſcous* hereupon, ſo that the execution of the ſame warrant thereby bee not had, it is Felony. *Vide ut ſuprà.*

The Iuſtice of Peace that ſhall take the examination of an offender for unlawfull hunting in Parkes, &c. as aforeſaid, may after ſuch examination, binde the offender to his good behaviour, (as it ſeemeth) to the end hee may bee forth-comming till the offence, and reſidue of the offenders bee fully examined: otherwiſe, if it ſhall after appeare, that the offender hath concealed any thing, whereby the offence becommeth felony, then the offender perhaps will not be found.

Alſo all ſuch unlawfull hunting, if it bee by three or moe, will prove a Ryot.

Whoſoever ſhall have or keepe any Greyhound, or ſetting Dog (not having ſufficient living according to this Statute;) or ſhall trace or courſe any Hare in the ſnow; or ſhall otherwiſe deſtroy, kill, or take any Hare, the ſaid offences being proved, &c. before two Iuſtices of Peace, the ſaid offenders ſhall be by them committed to the Gaole, &c. *Vide tit. Partridges*, more fully hereof. 1. Iac. c. 27. P. Pecham. 5.

And yet hunting and hawking, and ſuch other paſtimes, every man may uſe them upon his owne lands at his pleaſure, ſo farre as they bee not reſtrained by act of Parliament. But no man may make a Parke, or Warren within his owne ground, without the Kings grant or licence; and therefore ſuch Parke or Warren (made without licence) ſeeme not to be within the Statute of 1. H. 7. 7. See *Br. Warren.* 1. 2. & *Co. L.* 233. Co. 11. 86. b.

What a Parke is, and the difference betweene a Parke, a Forreſt, and a Chaſe, and what be Beaſts, or Fowles of Parke, and Chaſe, and Warren. *Vide Co. L.* 233.

There bee divers other Statutes made againſt hunting, &c. which bee very

very penall, but not to be dealt withall by the Iuſtices of Peace, except
in their generall Seſſions. See more of them *in the 25. Eliz. c. 7. & 31. Eliz. c. 9. & 35. Eliz. cap. 7.*

Intituled, Clarke.

ANy one Iuſtice of Peace may ioyne with the Clarke of the Peace, in taking the inrolment of any Indenture of bargaine and ſale of 27. H. 8. 16. P. 1. lands, &c. lying in the County where he is Iuſtice, and it is good.

Now the ſaid Iuſtice of peace, and the Clarke of the peace, are to take for the inrolling of the ſame Deed indented in parchment, &c. theſe fees following, *viz.* where the lands exceed not the yeerely value of 40. s. they are to take but ii. s. *ſc.* xii. *d.* for the Iuſtice, and xii. for the Clerke: And where the lands exceed the yeerely value of 40. s. there they are to take 3. s. *ſc.* ii. s. vi. d. for the Iuſtice, and ii. s. vi. d. for the Clerke, *Ibid.*

But ſuch Deed (and all other Deeds to be inrolled according to this Co. 5. 20. b. 8. 1. Co. 5. 21. b. Dalſton. 4. Eliz. Dyer 228. Statute) muſt bee indented *retro*, and muſt bee inrolled within ſixe moneths after the date of the ſame Indenture: and if it have no date then within ſixe moneths after the delivery of the Deed: or if it be inrolled, the very day of the Date of the Deed, or the very laſt day of the ſix moneths, it is ſufficient.

Note, herein you muſt account 28. dayes to every moneth, and not above (*ſc.* foure weekes to the moneth.)

Note alſo the difference, when a ſtatute accounteth by the yeere, halfe yeere, or quarter, and when by the moneth; for a yeere, halfe a yeere, or Cod. 81. a quarter of a yeere, ſhall bee accounted according to the Kalender, and by the dayes in the Kalender, and not after 28. dayes to the moneth. And a yeere, or a twelve-moneth (in the ſingular number) includes the whole yeere according to the Kalender. But twelve moneths (in the plurall number) or eight moneths, or ſixe * moneths, &c. ſhall bee accounted after 28. Ex. l. 135. *Except in Statute imp. 21. Co. Ibid.* dayes to every moneth: for the moneth by the Common Law of England, is but eight and twentie dayes; And ſo

Whereas { three moneths, / ſix moneths, / twelve moneths, } hath but { 84 / 168 / 336 } dayes.

The { quarter of a yeere, / halfe a yeere, / yeere, } hath { 91 / 182 / 365 } dayes.

Dyer 145. *Ter Centum, ter viginti, cum quinque diebus,*
Sex horæ, neque plus, integer Annus habet.

And as to theſe ſix houres, the Law giveth no regard to them; and yet theſe ſix houres every fourth yeere doe make a day, and ſo make the Leap yeere: and this Leape-yeere containeth in it 366. dayes.

Note alſo for the yeere, that the Iulian yeere (inſtituted by *Iulius Ceſar*) beginneth the firſt day of Ianuary, and ſo doth the Empire begin: the Hebrewes, 1. Aprill: the Church of Rome on their 25. of December: But in all matters Legall with us the yeere beginneth not till the 25.

day of March, and then shall the Indenture or other Writing or Deed in that behalfe be accounted to be dated. And if any Writing shall be dated since the yeere 1617. it must be accounted according to the computation of the Church of England, which beginneth the yeere upon the 25. day of March; upon which day our Saviour Christ Jesus arose from death, as it is holden, D. *Whites* Def. 151. and upon which day Christ was conceived in the Virgins wombe, as some write (and so was borne in December: and then the yeere of our Lord should be accounted from his conception and Incarnation, then his Nativity should stand upon which day the world was created, as it is held in the Jewish Church. Here the searching of Antiquities ... Bible impress. 1611.

Labourers. CAP. 21.

One Justice. EVery Justice of Peace, upon request, may cause all such Artificers and other persons as he meet to labour, (by his discretion) to worke by the day in Hay time and Harvest time, for the saving of corne and hay, and may upon their refusall imprison them in the stocks by the space of two dayes and one night. 5. Eliz. c. 4. s. 15.

Any one Justice of Peace may give licence under his hand and seale to such Labourers as palle in Hay-harvest, and Corne-harvest, from one Country to another to worke. P. 18.

Any one Justice of Peace (upon complaint to him made) may compell any person meet, (in his discretion) to bee bound as an Apprentice (with any one that shall require him) to Husbandry, or any other Art, &c. And upon their refusall may commit them to ward, there to remaine until they will bee bound to serve as an Apprentice should serve, according to this Statute. P. 24. Apprentice

If any Master shall misuse his Apprentice, or that the said Apprentice shall have just cause to complaine: or if the Apprentice doe not his duty to his Master, upon complaint thereof made by the Master, or Apprentice, being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice (by his discretion) shall take order betweene the said Master and his Apprentice: and for want of conformity in the Master, the said Justice may binde him to appeare at the next Sessions to be holden in the said County (where the Justices of peace, or foure of them, whereof one of them to bee of the *Quorum*, if they shall thinke meet, may discharge the said Apprentice of his Apprentiship and Indentures.) But if there shall be default in the Apprentice, the said Justices (at their said Sessions) may cause due correction to be ministred to him, as they shall thinke meet. Also it seemeth, that if the first Justice of peace to whom complaint was made, shall finde the default to bee in the Apprentice, that then the said Justice of peace may send him to the house of correction, as an idle or disorderly person, by the Statute 7. *Iac. cap.* 4. and needeth not to trouble the Sessions with him, *tamen quere*. But from the Sessions they may send him to the house of correction. P. 25. 7. Iac. cap. 4.

If an Apprentice shall steale or purloine any thing to the value of 12. d. or above, from his Master, the Apprentice, together with those that

that intiseth or perswadeth him thereto, or that shall receive any of the same goods, knowing they were purloined, shall be committed and punished by fine and imprisonment, at the discretion of any Justice of Peace, Maior, or other head Officer, as also the inhabitants, provided, that he or they to whom such goods, to the common Oyle, &c. But if the goods be not worth the value of xiii. d. it seemeth the Apprentice, regularly, shall be punished, and receivers may be sent to the house of correction, by the Justices of peace, or rather by the Justices of the generall Sessions. *Wheatley*, vigil. &c.

Any one Justice of peace may allow of the cause of putting away a servant, or of the departure of a servant within his record. 2.4.6.

But otherwise it is of an Apprentice, for an Apprentice cannot be discharged but by foure Justices of peace at the least, making open Sessions as aforesaid, or also by the agreement of the Maister and his Apprentice, and under his Maisters hand in writing. And yet one that is retained as an Apprentice, may be seised by the Lord as a Ward, by reason the larger title is more antient. 2.25. 32.33. 34.35. 143.1.

Any two Justices of peace upon complaint to them made, that any servant (who is retained according to the Statute) hath departed before the end of his time (unlesse he have some cause of absence to be allowed by one Justice of peace) the last day of the terme, or the end of his terme, without one Quarters warning given before, and wilfully, or that any person, compellable by the Statute to serve in Husbandry, or in any other Science in the said Statute named, upon export made, hath refused to serve for the wages appointed by Proclamation in that County, &c. according to this Statute; or hath qualified, or covenanted to serve and doth not, according to the Tenour of the same, the said Justices may examine the matter, and if they shall finde such servant or person faulty therein, they may commit him to Ward, there to remaine without baile, untill he shall be bound to the partie offended, to serve and continue with him for the wages limited according to this Statute, and then to bee discharged without paying any fee to the Gaoler. P.6. Two Iust. etc.

And yet any one Iustice of peace (as it seemeth) may make his Warrant, to attach a servant departed out of Service, or refusing to serve, to bee before the Iustices at their Sessions, there to answer their default. See *postea tit. Warrants, cap. 21.*

Also it seemeth that any one Iustice of peace may send such idle or disorderly servant to the house of correction, and that by the Statute of *7. Iac. cap. 4.*

Now by the Statute of *5. El.* every person unmarried, and every other person (maried) being under the age of thirtie yeeres, having beene brought up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon request made by any person using the same Trade, except such persons be lawfully retained with some other, or have xl.li. land, or xl. pound in goods, and so allowed by two Iustices of peace, under their hands and seales, or have some Farme in tillage, whereupon to imploy themselves. 5. Eliz. c. 4. P.2. Who shall be compelled to serve

P.3. Also, every person betweene the age of twelve yeeres and three-score, (not

P. Inst. 66. & Lamb. 4.

P. 12.

5 Eliz. 4. P. 4.

Ibid.

P. 11.

P. 12.

next Seſſions, and there the offender may bee convicted and puniſhed according to the Statute.

5.14 Any two Juſtices of Peace may compell any woman (being of the age of twelve yeeres, and under forty, and unmatried, and forth of ſervice) whom they ſhall thinke meet to ſerve, to bee received in ſervice, by the yeere, weeke, or day, for ſuch wages, and in ſuch ſort as they ſhall thinke it meet. And if ſuch woman ſhall refuſe, they may commit her to ward, untill ſhee ſhall be bound to ſerve as is aforeſaid.

Any two Juſtices of Peace may make a teſtimoniall to a Serving-man that is turned away from his Maſter, or whoſe Maſter is dead. 14. *Eliz. cap* 5. *quære*, if this be ſtill in force. *Lamb.* 326.

1.Iac.6. For Clothiers which will not pay their workmen ſuch wages as ſhall be aſſeſſed by the Juſtices at their Seſſions, See the title of *Cloth.*

5.El.4 f.29. The certificate which is to be made to the head Officer of any City or Towne corporate, where a child is to be bound Apprentice, (*ſc.* that the father of ſuch childe may diſpend 40. s. *per annum*) muſt bee under the hands and ſeales of three Juſtices of the Peace of the Shire where the land lieth. *Three Juſt. cer.*

The reaſon of this Law ſeemeth to be, for that ſuch as be to be bound Apprentices in Corporate Townes, &c. if their Parents be of a competent livelyhood, then their Maſters ſhall not only be the better ſecured, &c. but ſuch Apprentices alſo in likelyhood ſhall have the better meanes to ſet up their Trades after their time expired. And concerning ſuch whoſe Parents have not forty ſhillings *per annum*, they are fitter to be bound Apprentices to Husbandrie, &c. in the Countrey.

But concerning this certificate, it ſeemeth not much in uſe at this day: neither is this certificate ſo of the ſubſtance of the matter, or ſo materiall, that for want thereof the Indentures for the binding of ſuch an Apprentice ſhall be void, (for the Iuſtices of Peace cannot be compelled to certifie, &c.) but if the Parents have 40. s. *per annum*, it ſufficeth: and ſo were the opinions of Sir *Humfrey Winch*, and Sir *William Iones*, in the Court of Common Pleas *Termino Paſch. anno* 21. *Iacobi. Regis.* But Sir *Henrie Hobart*, Lord chiefe Iuſtice of the Common Pleas, did not then deliver his opinion therein directly; yet hee ſeemed to me to hold, That the Parents of ſuch an Apprentice ought to have 40. s. *per annum*, and alſo ought to procure ſuch a certificate from the Juſtices of Peace.

Here I thinke it not amiſſe, to ſet downe certaine Caſes, ſome of them being by way of expoſition of this Statute 5. *Eliz. cap.* 4. And other ſome at the Common Law, or grounded upon former Statutes, yet ſuch as may give light and helpe to our Juſtices of Peace in this buſineſſe.

Co.11.53. Firſt, by the Common Law no man may bee prohibited to worke in any lawfull Trade, for the Law abhorreth idleneſſe as the mother of all evill.

Co 11.86. A man cannot be reſtreined to uſe the Trade of making Dice, Cards, Bowles, or the like; (except it be by Parliament) for all Trades which do avoid idleneſſe, and exerciſe men in labour, for the maintenance of them and their families, and for to increaſe their ſubſtance, and to ſerve the King when need ſhall bee, are profitable for the Common-wealth, and

therefore

therefore the reſtraining of them is againſt the Law, &c. *Co.* 1 186.

Alſo by the Common Law, no man is prohibited to uſe divers Myſteries or Trades at his pleaſure, and although this was prohibited by the Statute of 37 *Ed.* 3. *cap.* 6. yet preſently at the next Parliament (that reſtraint of free Trade being found prejudiciall to the Common-wealth) it was enacted againe, that all perſons ſhould bee as free as they were at any time before the ſaid Statute. *Co.* 11. 54. See the Statute of 38 *Ed.* 3. *cap.* 2. Co. 11. 54.

For that without an Act of Parliament, no man may bee reſtrained in any manner, either to worke in any lawfull Trade, or to uſe divers Myſteries, or Trades; therfore ordinances made to reſtraine any perſon therein, are againſt the Law: and yet ordinances made for the good order and government of Trades in, &c. are good. *Cubbid.* Ibid.

Alſo it is lawful for any perſon to uſe privatly any Trade (as of a Cook, Brewer, Baker, or Taylor, &c.) in his owne houſe, or in the houſe of any other, for the private uſe of the family, although ſuch perſon were never Apprentice to the Trade. *Cubbid.* Ibid.

If a man uſe the Trade, of Tallow-Chaundler, Baker, Brewer, or any other lawfull Trade, or manuall Occupation, for his owne uſe, or for the uſe of his family, without ſelling any for lucre or gaine, hee may lawfully doe it. *Co.* 8. 130.

And yet hee which uſeth any Trade, or other manuall Occupation, for the uſe of himſelfe, or of his family only (without ſelling) hee cannot retaine any Apprentice within the Statute of 5. *Eliz. Co.* 8. 129. But hee may hire one to bee his ſervant, who is skillfull in that Trade or Occupation.

One purchaſed a Mill, and hired a Miller to be his ſervant, who ground the grifts of his neighbours, and the wife of the owner of the Mill, tooke money of the neighbours for their griſts ſo grounde, and for this the huſband (who was owner of the Mill) was indited at Cambridge Summer Aſſiſes, *Anno Dom.* 1610. by reaſon that hee was never himſelfe Apprentice to the Trade: it was the caſe of *T. P. Yeoman.*

The intent of this Statute 5. *Eliz. cap.* 4. was that no perſon ſhould take upon them any Art, Myſterie, or Trade, &c. but ſuch wherin they had skill and knowledge, according to the Rule, *Quod quiſque norit in hoc ſe exerceat. Co.* 8. 130.

And therefore none may keepe a common Brew-houſe, Bake-houſe, Cookes-ſhop, &c. to ſell to others, except they have been Apprentice thereto by the ſpace of ſeven yeeres, &c. *Ibid.*

Note that theſe words, Myſtery, Trade, and Craft, doe all beare one ſenſe or ſignification. See *Plo.* 337. & *Co.* 11. 54.

Note next, that this Statute, 5. *Eliz. cap.* 4. extendeth not to Servingmen, but to ſervants in Husbandrie, and Handi-crafts: And yet where the words of the Statute bee, Servant generally, there it ſeemeth to extend to all. Cromp. 14.

Who be compellable to ſerve.

An Apprentice muſt be retcined by Indenture, and by the name of an Apprentice expreſly, or elſe he is no Apprentice, though he be bound. Cromp. 14. P. 15.

Who are compellable to ſerve, See in this title before and after.

Every

Fitz. 168. Every Juſtice of Peace may command vagrant perſons to priſon, if they will not ſerve.

Fitz 167.a. 168.i. Every perſon who hath not ſufficient lands to occupie, or live upon, nor other Art, is compellable to ſerve. See *Br.* 14.

Fitz 168.d.e. F.j.14. Br. Ley. 17. If an Infant, man or woman, of twelve yeeres of age, or a Gentleman, Chaplaine, Carpenter, or other perſon which is not compellable to ſerve, yet if they ſhall make a covenant to ſerve in husbandry, they ſhall bee bound by their covenant, and are puniſhable if they then ſhall depart, &c.

7. H. 4. 5. 2. H. 4. 18 Br. 19 20 Yet by the Common Law ſuch a covenant or reteiner of an Infant under twelve yeeres of age was void, they neither having ability of body, nor yeeres to conſent: for an infant (by the Common Law) is not of age to binde it ſelfe by covenant, *ante annos nubiles*, which is 12. yeeres in a woman, and 14. yeeres in a man-childe. *Co.* 7. 43. & 9. 72. Neither before that age are they accounted, *potens in corpore*, which were the words uſed in the Statute made 23. *E.* 3. though thoſe words are now left out of the Statute 5. *Eliz.* And thereupon *Markham* in 21. *H.* 6. and *M. Br.* abridging that caſe, ſeeme to hold 14. yeeres to bee the age for reteiner of an Infant, but there the caſe was of a man-childe that was reteined.

21. H. 6. 31. Br. 30.

F. 25. 23. But now by the Statute 5. *El. cap.* 4. any perſon above the age of ten yeeres, by their owne conſent and agreement, may by Indenture bee bound as an Apprentice to husbandry, or any other Trade or Art.

F. j. 14. 23. Alſo one of twelve yeeres of age by the ſame ſtatute is compellable by the Juſtice to ſerve in husbandry: ſo alſo it ſeemeth of other Trades, Arts, or Occupations.

Such children whoſe parents are not able to maintaine them, though they bee under twelve, yea if they be but above ſeven, yet may they bee bound Apprentices by the Overſeers of the poore, with the aſſent of any two Juſtices of Peace, by the ſtatute of 43. *El. cap.* 2. See *poſtea tit. poore.*

33. H. 6. fo. 5. F. 15. If a childe uſe Husbandry till the age of twelve yeeres, and after bee made an Apprentice to any Myſtery, his covenant ſhall bee voide: but this Statute of *R.* 2. ſeemeth to bee repealed by the generall words of 5. *El.* 4.

And now though ſuch childe hath uſed Husbandry till his age of 12. yeeres, yet if he be not bound as an Apprentice to husbandry, (and that his parents bee not able to maintaine him) then it ſeemeth that the overſeers for the poore, by the aſſent of the Juſtices, may binde as an Apprentice ſuch a childe, according to the ſtatute 43. *Eliz. cap.* 2. and that by force of the ſaid ſtatute, *P. tit Poore.* 2.5. And any perſon to whom the Overſeers ſhall ſo binde ſuch an Apprentce, may take and keepe him as his Apprentice, &c. 1. *Iac.* 25. & 21. *Iac.* 28.

21. H. 4. fo. 13. Br. 11. Fitz. 168. a. If a woman who is a ſervant, ſhall marrie, yet ſhee muſt ſerve out her time, and her husband cannot take her out of her M. ſervice.

A married man and his wife doe binde themſelves to ſerve, they ſhall bee compelled to ſerve according to their covenant or agreement, *Fitz.* 168.

But

But a man that holdeth land of his Lord, to doe certaine dayes works yeerely, ſhall not be compelled to ſerve. 40. *E.* 3. 39 *Cromp.* 185.

A ſervant may be compelled to ſerve in Summer in the place where hee ſerved in the Winter before: But this ſeemeth to have beene only by force of the ſtatute made *Anno* 25. *E.* 3. *cap.* 2. which ſtatute now ſtandeth repealed by the ſtatute made 5. *Eliz. cap.* 4.

What reteiner is good. If a man who is not able nor ſufficient to keepe a ſervant, ſhall retaine a ſervant, ſuch reteiner is void, *Br.* 25. Fitz. 168.b.

If a man retaineth a Labourer or ſervant, to ſerve him according to the ſtatute, though no wages be ſpoken of upon the reteiner, yet the reteiner is good, and they ſhall have ſuch wages as is aſſeſſed and appointed by Proclamation, for that wages is certaine. See to this purpoſe the Booke, 3. *H.* 6. *fol.* 13 *Brit.*

If a man retaineth another, except the reteiner be according to the Statute it ſeemeth to bee void, without it bee by Indenture, and then being by Deed, he is bound by his Covenant. See *Fitz. N. B.* 168. *f.*

Reteiner upon condition, ſeemeth to be a good Reteiner. See 11 *H.* 4. 42. *Br.* 23.

A man retaineth a ſervant to ſerve him, generally, not expreſſing in what office, or in what buſineſſe (as to ſay to ſerve him in Husbandry, or in the office of a Cooke, Butler, or Horſe-keeper, &c.) yet ſuch Reteiner ſeemeth to be good. 21. *H.* 6. *Br. Luber.* 29.

A man is reteined to ſerve during his life, it ſeemeth a good Reteiner *Br.* 44. 2. *H.* 4. *fol.* 15. And ſo for three yeeres or moe. *Fitz.* 168.

A man is reteined for one yeere, to ſerve at any time when he ſhall be thereto required; this is no good Reteiner See 22. *H.* 6. 30. *Br.* 31.

Reteiner of a ſervant generally without expreſſing any certaine term, ſhall be for one yeere (in conſtruction of Law) for that Reteiner is according to Law. Fitz. 169.b. P. 1. Co. L. 42.b.

A. reteineth a ſervant for fortie dayes, and after *B.* retaineth the ſame ſervant for one yeere: The firſt reteiner by *A.* is defeated and become void. *Br.* 31. See 11. *H.* 6. 1. *Br.* 49. Fitz. 169.b.

If a ſervant, who is reteined, ſhall depart out of his ſervice, and wander, he may be compelled to ſerve another man, but yet the firſt Maſter may take him away againe: See *Br. Notice* 2. 4. And beſides it is ſafe to get the conſent of his firſt Maſter, for now by the Statute 5. *Eliz. c.* 4. the Maſter reteining a ſervant that is departed out of ſervice, without ſhowing before his Reteinor, a teſtimoniall, ſhall forfeit v. li. Fitz. 168.b. P. 2.

A man that reteineth a ſervant, ought to take notice of every former Reteiner within the ſame County, otherwiſe it is of a Reteiner in another Countie. 17. *E.* 4. *fol.* 7 *Br. Notice.* 20.

And yet Maſter *Fitzh.* opinion was, That if one reteineth another mans ſervant (generally) not knowing that hee was another mans hired ſervant, hee was not puniſhable therefore, except he ſhould detaine him after notice thereof: but now the Maſter may and muſt take notice whether he hath a teſtimonial or no (as it ſeemeth.) Fitz. 168.b. Br. 17. 29 Dr. St. 2. 36.

Departure of a ſervant If one taketh an Infant, or other ſervant out of another mans ſervice, this is puniſhable, though the Infant or ſervant was not reteined; but if Fitz. 168.b.

an

an Infant being reteined as an Apprentice or ſervant, fall to bee a Ward, the Lord may take him from his Maſter, for the Lords Title is more ancient: yet here it ſeemeth the Lord ought firſt to give notice thereof to his Maſter, 50 *E.*3.22. *Br. Labor.*17. See *Br. Notice.*2.4.

Fitz.163.f. Plo.359. Note, that by the Reteiner, the ſervant is in ſervice preſently by Law, although hee commeth not into his Maſters ſervice indeed, 41. *E.* 3.20. 46. *E.*3.4.47. *E.*3.14. *Br.*9.11.

Fitz.168.g. If a ſervant ſhall depart from his Maſter, his Maſter may take him againe, and reteine and keepe him whether he will or no. See the Title, *Surety for the peace.* And the Conſtable may take and bring ſuch a Servant to his Maſter againe, *Fitz. Labor.*56.

The Maſter cannot diſcharge his Servant, during his terme, &c. without the agreement of the ſervant; And now by the Statute 5. *Eliz.*4. it muſt be for ſome reaſonable cauſe, to be allowed by one Iuſtice of peace at leaſt, &c. *Vide P.*5. otherwiſe the Maſter ſhall forfeit xl.s. *Tamen quære:* for where the departure or putting away of the Servant is by the joint conſent of the Maſter and of the Servant, ſuch putting away or departure, ſeemeth not to bee within the Statute of 5. *El.* neither is the allowance of the Iuſtice of Peace requiſite or needfull therein.

The Maſter may diſcharge his Servant by word; but an Apprentice cannot bee diſcharged by his Maſter, except it be by writing: for that an Apprentice cannot be but by writing.

If a Servant ſhall bee put away by his Maſter, yet hee ſhall have his wages for the time he ſerved. And yet in this caſe if the Servant agree thereto, the Servant ſhall have no Action to recover any part of his wages, but muſt crave the helpe of the Iuſtice of Peace herein: but if ſuch Servant bee within age, it ſeemeth ſuch agreement ſhall not prejudice the Servant.

But if a Servant of his owne accord ſhall depart from his Maſter before his time expired, he ſhall loſe all his wages.

If a Servant bee reteined according to the Statute, and the Maſter dyeth, his Executors ſhall bee chargeable to pay ſuch ſervant his wages. Otherwiſe it is where the Reteiner was not according to the Statute, except it were by Indenture. See 2. *H.*4.15. *Br. Labor.*44. & *Fitz. Na. Br.*168. *f.*

An Infant of five yeeres of age, or other perſon which is not *potens in corpore*, yet if they ſhall be reteined, and ſhall ſerve indeed, their Maſter muſt pay them their wages. See 38. *H.*6.22. *Br. Lab.*46. & *Ley Gager* 67.

If a Servant reteined for a yeere, happen within the time of his ſervice to fall ſicke, or to be hurt or lamed, or otherwiſe to become *non potens in corpore*, by the act of God, or in doing his Maſters buſineſſe, yet it ſeemeth the Maſter muſt not therefore put ſuch ſervant away, nor abate any part of his wages for ſuch time.

H.6.37. If a ſervant ſhall refuſe to doe his ſervice, this is a departure in law, although he ſtay ſtill with his Maſter.

Fitz.168.l. If the Maſter ſhall detaine from his Servant his wages, meate, or drinke; this is a good cauſe of departure: But yet this cauſe is now by the Statute of 5. *Eliz.* to bee allowed of by the Iuſtice of Peace,

before the ſervant may lawfully or ſafely depart.

So if the Maſter ſhall licence his ſervant to depart, or if the Maſter or wife of the Maſter ſhall beate the ſervant, theſe were good cauſes for the ſervant to depart, before the Statute 5. *Eliz.* 4. but now the allowance of the Iuſtice of Peace is requiſite as aforeſaid. And yet note, that the Maſter by law is allowed, with moderation to chaſtiſe his ſervant or Apprentice ſee 33. *H.* 8. *cap.* 12. and in the title, *Suretie for the peace.* Fitz. 168. 14 Br. 51. P. 6.

But now that by the Statute of 5. *Eliz.* the cauſes of putting away and departing of ſervants are referred to the conſideration and allowance of the Iuſtices of Peace; it behooveth them to have good care, leſt by their giving too much way therein, either to the maſter or ſervant, many which might by due ordering have prooved good ſervants, turne Rogues and Vagabonds.

No perſon (retained in Husbandrie, or in any the Arts or Sciences mentioned in the Statute of 5. *Eliz. cap.* 4.) after his reteiner expired, may depart out of one Limit, Towne or Pariſh, into another, without a teſtimoniall under the ſeale of the Officer of the Towne where hee laſt ſerved, &c. Neither may any perſon take into his ſervice any ſervant ſo departing, without ſhewing ſuch teſtimoniall; upon paine that every perſon retaining any ſuch ſervant without ſuch teſtimoniall, ſhall forfeit 5. li. being thereof convicted; upon inditement taken in the Seſſions of the Peace, &c. and upon paine that every ſervant ſo departing without ſuch teſtimoniall, ſhall be impriſoned till he procure a teſtimoniall, the which if he cannot doe within the ſpace of twentie one dayes next after the firſt day of his impriſonment, then hee is to be whipped and uſed as a vagabond: and ſo if hee bee taken with any counterfeit or forged teſtimoniall. 5. *Eliz. cap.* 4, P. 7, 8.

London. CAP. 32.

NO new buildings ſhall bee erected for habitation, within three miles of London, nor any building ſhall be divided or converted to ſeverall habitations there, except ſuch houſes ſhal be fit for the dwelling of ſuch a perſon as heretofore hath beene aſſeſſed to the Subſidie of v. li. in goods, or iii. li. in lands, at the aſſeſment next before the ſaid building or diviſion, or as ſhall bee adjudged by the two next Iuſtices of Peace (by writing under their hands and ſeals, to be preſented at the next quarter Seſſions) to be fit and able to be ſo aſſeſſed in the ſubſidy, 33 H. 8. 35. El. 6.

The two next Iuſtices of Peace have power to decide and determine of the ſufficiency and conveniency of ſuch houſes, and of the ſufficiency of the inhabitants therein. *Ibid.*

Maults. CAP. 33.

One Iuſtice THe Conſtables or Bailiffe of any Towne, where any deceitfull Maults ſhall bee made or mingled, to bee ſold contrary to the Statute 2 Ed. 6. 20. 27. El. 19. 1 Iac. 25. p. 4.

tute 2. *Ed.* 6. may from time to time view and ſearch all ſuch Mault, as ſhall bee made or put to ſale within any of their Townes; and if thereupon they ſhall finde any Mault put to ſale, being evill made, or mingled with evill Maule, contrary to this Statute; then the ſaid Conſtable or Bailiffe, ſo finding any ſuch deceitfull Mault, with the advice of any one Iuſtice of Peace, may cauſe the ſame to bee ſold to ſuch perſons, and at ſuch reaſonable prices, as to the diſcretion of the ſame Iuſtice ſhall ſeeme expedient. 23 *Hen. cap.* 28. & 3. *Cap.* 4.

These deceitfull Maults be of three ſorts, ſuch as be not well made, or not well dreſſed; Or mixed: As,

1. Firſt, if any Barley-Mault ſhall bee made (in the moneths of June, July, and Auguſt onely excepted) if the ſame Mault ſhall not have in the making thereof (*ſc.* in the fat, floore, ſteeping, and drying thereof) three weekes at the leaſt: and in the moneths of June, July, and Auguſt, ſeventeene dayes at the leaſt. For under ſuch times the Mault cannot be well made, nor wholeſome for mans body: and Maults not ſufficiently dryed cannot be kept long, but will be muſtie and full of weeuils.

2. Secondly, if any Maults ſhall bee put to ſale which bee not well trodden, rubbed, and well fanned.

3. Thirdly, if any Maults be mingled, ſo Maults not well made as aforeſaid, or made of Mow-burnt, or ſpired Barley, and mixed with good Maults, and ſo put to ſale.

39. Eliz. 16. p. 6. The Iuſtices of Peace at their quarter Seſſions (or the more part of them) at all times may ſuppreſſe and diſcharge, or reſtraine the number of Maulſters; and alſo may reſtraine ſuch perſons as they ſhall thinke meet, for buying Barley to convert to Maule. And if any perſon ſhall refuſe, diſobey, or not performe ſuch ſuppreſſing, diſcharge, or reſtraint, or any other order which the ſaid Iuſtices in their Seſſions ſhal ſet down touching the ſame; then, and ſo often ſuch perſon, being thereof duly convicted before the Iuſtices at their Quarter Seſſions, or before any two Iuſtices of Peace out of their Seſſions (by his owne confeſſion, or by two witneſſes) ſhall be by the ſaid Iuſtices committed to the common Gaole, there to remaine without baile for three dayes, and after that untill hee ſhall become bound by Recognizance in forty pounds to the Kings uſe, before ſome one Iuſtice of Peace, to performe and obey ſuch order, ſuppreſſing, diſcharge, or reſtraint, So that any two Iuſtices of Peace may convict ſuch offenders (upon their confeſſion, or by two witneſſes) and then may commit them, as aforeſaid: and after, any one Iuſtice of Peace may take ſuch Recognizance, as aforeſaid.

Two Iuſtices.

Limit. 338.

One Iuſtice.

Mariners. Cap. 34.

5. Eliz. 5. p. 3. NO Fiſherman uſing the Sea ſhall be taken to ſerve as a Mariner by the Kings Commiſſion, but by the choice of two Iuſtices of Peace next adjoyning to the place where he is taken.

See more for Mariners, *title, Rogue, and Souldier.*

Night-walkers. CAP. 35.

EVery Iuſtice of Peace (*ex officio*, and by the Commiſſion, the firſt *Aſſignavimus*) may cauſe to be arreſted all Night-walkers, bee they ſtrangers or other perſons that be ſuſpected, or that be of evill behaviour, or of evill fame: and more particularly all ſuch ſuſpected perſons as ſhall ſleepe in the day time, and goe abroad in the nights; And all ſuch as ſhall in the night ſeaſon haunt any houſe that is ſuſpected for bawderie; Or ſhall in the night time uſe other ſuſpitious company; Or ſhall commit any other outrages or miſdemeanours; and may force them to finde ſurety for their good behaviour. See the title, *Suretie for the good behaviour, cap. 75.* Lamb. 46. 123. 13. H. 7. 10. Dal. 98. pl. 7 and 8

For as one ſaith, ſuch Night-walkers (or Night-birds) are ominous, like the Whiſtler, &c. and ſuch night-walkings are unfit for honeſt men, and more ſuting to the Theefe (the right Whiſtler,) and to beaſts of the prey, which come forth of their dens, when man goes to his reſt. Pſal. 104.

Oath. CAP. 36.

One Juſtice ANy one Iuſtice of Peace may compell ſuch as are betweene the age of fifteene yeeres and threeſcore, to bee ſworne to keepe the Peace. See the Statute of *Winchеſt.* 13. *E.* 1. *cap.* 6. And the Articles of Inquiſition upon the ſaid Statute of *Winchеſt.* made about *An.* 34. *E.* 1. Lamb. 190.

Any two Iuſtices of the Peace (the one being of the *Quorum*) may require any perſon of the age of eighteene yeeres or above (under the degree of a Baron or Baroneſſe) to take the Oath of Allegeance, and upon their refuſall, may commit them to the common Gaole, there to remaine without baile till the next Aſſiſes, or Quarter Seſſions. 7. Iac. 6.

Two Iuſtices, &c. may take the oaths of the under-Sheriffes, and their Officers, &c. See the title *Sheriffes.*

Partridges. CAP. 37.

EVery Iuſtice of Peace (by the Statute of 23. *Eliz.*) may examine all offences, for the deſtroying or taking of Partridges or Feſants in the night time; and for hawking or hunting with Spaniels, in any eared or codded corne: and may binde by Recognizance the offenders with good Sureties to appeare at the next generall Seſſions of the Peace to anſwere their ſaid offences, &c. 23. El. 10. P. Peſants. P. Iuſt. 31.

Two Juſtices. But now by the Statutes made 1. *Iac.* 27. & 7. *Iac.* 11. the offences of deſtroying, &c. of Partridges and Feſants (generally) is referred to two Iuſtices of Peace, to examine, heare, and determine out of Seſſions. *Vide hic infra.* 1 Iac. 27. 7. Iac. 11.

Alſo after the conviction of any ſuch offender (according to the Statute of 23. *Eliz.*) for taking or deſtroying any Partridges or Feſants in the 23. El. 10. P. Ibid.

the night time, any one Iuſtice of Peace of that County may binde ſuch offenders with good ſureties, that (for the ſpace of two yeeres) they ſhall not take or deſtroy any Partridges or Feſants contrary to that Statute.

1. Iac. 27. 1. By the Statute made 1. *Iac.* Every perſon which ſhall ſhoot at, kill, or deſtroy (with any gun or bow) any Partridge, Feſant, Houſe-dove, Pigeon, Heaſe, Mallard, Ducke, Teale, or any ſuch Fowle, or any Hare;

2. Or ſhall take, kill, or deſtroy any Partridge, Feſant, Houſe-dove, or Pigeon, with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments:

3. Or ſhall take out of their neſts, or willingly deſtroy, or breake in the neſt, the egges of any Feſant, Partridge, or Swan:

4. Or ſhall trace or courſe any Hare in the ſnow:

5. Or ſhall at any time take, or deſtroy any Hare with cords, or any ſuch inſtruments:

6. Or ſhall have or keepe any Greyhound for Deare, or Hare, or ſetting Dog, or Net, to take Feſants or Partridges (except they have lands, &c. of inheritance of the cleere yeerely value of xl. li. or xxx. li. *per annum* for life, or goods worth a c. li. or be the ſonne of a Knight, or of ſome perſon of higher degree, or the ſonne and heire apparent of an Eſquire) the ſaid offences being proved by the confeſſion of the party, or by the oath of two ſufficient witneſſes, before any two Iuſtices of Peace (of the County where the offence ſhall bee committed, or the offender apprehended) ſhall by the ſaid Iuſtices (for every ſuch offence) bee committed to the common Gaole for three moneths, without baile, unleſſe the ſaid offender ſhall forthwith upon the ſaid conviction, pay to the uſe of the poore theare, xx. s. for every Hare, Fowle, and Egge, ſo taken or deſtroied; and forty ſhillings for having ſuch Greyhound, ſetting Dogge, or Net; Or after one moneth after his commitment, become bound by recognizance with two ſufficient Sureties in xx. li. a peece with condition not to offend thereafter, in any the particulars aforeſaid. Which ſaid Recognizance ſhall bee taken by any two Iuſtices of Peace of the County where the offender is impriſoned, and by them ſhall be returned to their then next Quarter Seſſions.

Alſo it may ſeeme by the generall words of the Statute, that any two Iuſtices of Peace may in like manner proceed to examine and puniſh the offences of ſelling, or buying to ſell againe, any Deere, Hare, Partridge, or Feſant, contrary to this Statute; for the words of the Statute be, That any two Iuſtices of Peace, or more together, out of any Seſſions, may examine, heare, and determine all offences againſt this Statute made 1. *Iac. Regis*, and may performe every other thing requiſite for the due execution thereof.

1. Iac. 27. 21. Iac. 28. By the Statute made 7. *Iac. Regis*, every perſon which ſhall take, kill, or deſtroy any Feſant, or Partridge, with ſetting Dogs, and Nets, or with any manner of Nets, Soares, or Engines (it being proved by the confeſſion of the party, or by the Oath of one ſufficient witneſſe before any two Iuſtices of Peace) ſhall by the ſaid Iuſtices bee committed for three moneths without baile; unleſſe the ſaid offender ſhall forthwith pay to

the use of the poore there, xii. s. for every such Fesant, and Partridge: And further, to become bound by Recognizance in the summe of xx. li. never to take, kill, or destroy any Fesant, or Partridge any more; which Recognizance shall be taken by any one Iustice of Peace of the County where the offence shall be committed, and shall bee returned to the next Quarter Sessions.

Every person which shall hawke at, kill, or destroy any Fesant, or Partridge, with any kinde of Hawke, or Dog, (by colour of hawking) betweene the first of Iuly, and the last day of August, (the same being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Iustices of Peace of the County where the offence was committed, or the offender apprehended) shall by the said Iustices bee committed to the common Gaole, there to remaine for one moneth without baile; unlesse the said offender shall forthwith upon the said conviction, pay to the use of the poore there (where the offence shal be committed, or the party apprehended) xl. s. for every such hawking at Fesant or Partridge, and xx. s. for every Fesant or Partridge, which any, and every such offender by himselfe, his Hawke, or Dog, shall take, kill, or destroy, contrary to the intent of this Statute. 7. Iac. 11. 21. Iac. 28.

But no offender punished by vertue of this Law, shall be punished by vertue of any other Law, for the same offence. Also such offences must be complained of to the Iustices of peace, within six moneths after the offence. 7. Iac. 11.

Any two Iustices of Peace may make their warrant under their hands, to any Constable, to enter into, and search the houses of any person (other then of such as have free Warren, or are Lords of any Mannour, or have Free-hold of xl. li. by the yeere, or more, of some estate of inheritance, or have fourescore pounds by the yeere for terme of life, or bee worth in goods 400. li.) being suspected to have any setting-dogs, or any manner of nets, for the taking of Fesants and Partridges: And whereſoever they shall finde any such dogge or nets, the same to take, carrie away, detaine, kill, destroy, and cut in peeces. 7. Iac. 11.

By the same Statute *7. Iac. cap.* 11. every such person as hath free Warren, or is Lord of a Mannour, or hath other estate as aforesaid, is allowed (on their owne free Warren, Mannour, or Free-hold) to take Fesants and Partridges in the day time onely, and betweene Michaelmas and Christmas.

Peace. CAP. 38.

EVery Iustice of Peace hath authority and power given him (by the first *Assignavimus*, or clause in the Commission) to keepe and cause to be kept the Kings Majesties peace; by force of which words they have as well the ancient power touching the keeping of the Peace, which the ancient Conservators of the Peace had by the Common Law; as also all authority which the Statutes since have added thereto: And so they may cause to bee kept all the Statutes and Lawes now in force; which Lamb. 46.

been

been made for the Peace, or keeping thereof: and more especially they may arrest, or cause to be arrested, and sent to the Gaole, all murtherers, robbers, and felons, and all persons suspected of such things.

They may also suppresse, and binde to the Peace, or good behaviour, all Affrayors, and all persons unlawfully and riotously assembled, or unlawfully wearing armour, or any weapons, by night or by day, or otherwise putting the people in feare, and all unlawfull night-walkers, and the like: All which may well be said to be disturbances or breaches of the Peace. See more for these under their particular titles.

If any Affray, Forcible Entrie, or other thing in disturbance of the Peace be made or committed in the presence, or within the view of a Iustice of Peace, hee hath power to record it, and to certifie the same, and also to commit the parties to ward, presently upon the fact done: But if there bee any meane, space, or time, then hee cannot commit them to ward, but he may record the same, and may (at any time after make his Warrant to take them, and) binde them with Sureties, to their good behaviour, and for want of Sureties may send them to the Gaole. *Cro. 41. per Curiam.*

If the Iustice of Peace shall certifie into the Kings Bench, that *I. S.* hath broken the Peace in his presence, upon this certificate *I. S.* shall bee there fined, without allowing him any Traverse thereto. *Mar. Lett. 3. Cromp. 132.*

Plague. Cap. 39.

1 Iac. 31. P. 4. 5 Iac. 28.

IF any person infected, or being, or dwelling in an house infected with the plague, shall be by any Iustice of Peace (or other Officer) commanded to keepe his house, and notwithstanding shall wilfully goe abroad, and converse in company, having any infectious sore upon him, it is felonie: and if such person shall not have such sore about him, yet for his said offence he shall be punished as a Vagabond (by the appointment of any Iustice of Peace, as it seemeth) and further shall bee bound to his good behaviour, for one whole yeere. *One Iustice.*

It shall be lawfull for the Iustices, or any one Iustice of Peace (and other head Officers in Corporate Townes) within their severall limits, to appoint Searchers, Watch-men, Examiners, Keepers and Buriers, for the persons and places infected: and to minister to them oaths, for the performance of their said severall offices: and to give them other directions, as to them shall seeme good, see *Cromp. 122. b.*

If any person infected, or dwelling, or being in an house infected, shall contrary to the commandement or appointment of the Iustice of Peace (or other Officer) wilfully attempt to goe abroad, or to resist such their Keepers or Watch-men, then may such Watch-men with violence enforce them to keepe their houses, &c. *Ibidem.*

Any two Iustices of Peace (or any two head Officers) of any Citie, Borough, Towne corporate, and Place priviledged, may tax all and every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, *Two Iustices.*

diraments, within the ſaid Citie or Borough, &c. or the liberties thereof (at ſuch reaſonable taxes, as they ſhall thinke fit) for the reaſonable releefe of ſuch perſons as are infected, or inhabiting in houſes infected in the ſame City, &c. And may levie the ſaid taxes (by diſtreſſe and ſale of the goods of every perſon refuſing, or neglecting to pay the ſaid taxes) by warrant under the hands and ſeales of two ſuch Iuſtices, or head Officers, to be directed to any perſon or perſons, for the execution thereof: and in default of ſuch diſtreſſe, and that refuſall be made of payment, upon returne thereof, the ſaid Iuſtice (or Officers) by like warrant may commit ſuch perſon to the Gaole, there to remaine without baile, untill he ſhall ſatisfie the ſame taxation, and the arrerages.

If the inhabitants of any ſuch City, &c. are unable to releeve their infected perſons, &c. upon certificate thereof by the head Officer, and other Iuſtices of Peace of ſuch Citie, &c. or by any two of them, to any two Iuſtices of Peace of the Countie of, or neere to the ſaid Citie, &c. ſo infected; Any two Iuſtices of or neere the ſaid Countie, may tax the inhabitants of the Countie within five miles of the ſaid place infected, at ſuch reaſonable weekely rates as they ſhall thinke fit, to bee levyed by Warrant from any two ſuch Iuſtices of Peace, of or neere the ſaid County, by diſtreſſe, and ſale of goods, and in default thereof, by impriſonment of the body of the party taxed as aforeſaid. P.2.

If any ſuch infection ſhall bee in any Borough or Towne corporate, where there are no Iuſtices of Peace, or within a Village within any Countie; then any two Iuſtices of Peace of the ſame County wherein the ſaid place infected ſhall be, may tax the inhabitants of the ſaid County, within five miles of the ſaid place infected, at ſuch reaſonable weekly rates, as they ſhall thinke fit, for the releefe of the ſaid places infected, to be levied by diſtreſſe and ſale of goods (upon Warrant from the ſaid Iuſtices of Peace of the ſame County) and in default thereof by impriſonment, as aforeſaid. P.3.

All ſuch taxes made by the Iuſtices of the County, for the releefe of ſuch City, &c. ſhall bee diſpoſed by the ſaid Iuſtices of the ſaid Countie, and as they ſhall thinke fit (where there are no Iuſtices of Peace in ſuch Citie, &c.) And where there are Iuſtices of Peace, then in ſuch ſort as the head Officer and Iuſtices of Peace there, or any two of them ſhall thinke fit. P.3.

All ſuch taxes made either in Citie, &c. or Countie, ſhall by the ſaid Iuſtices that taxed them, (as it ſeemeth) be certified at their next Quarter Seſſions to bee holden within ſuch Citie, &c. or Countie, reſpectively, there to be continued, inlarged, extended to other parts of the Countie, or determined, as at the ſaid Seſſions ſhall be thought fit. P.3.

But no Iuſtice of Peace ſhall doe or execute any thing before mentioned, within either of the Vniverſities of Cambridge or Oxford, or within any Cathedrall Church, or the liberties thereof, or within the Colleges of Eaton or Wincheſter; but the Vice-Chancellor of the Vniverſitie, Biſhop, and Deane of ſuch Church, and Provoſt or Warden of the ſaid Colledges ſhall doe and execute all things above mentioned, within their ſeverall Precincts. P.4.

Poore. Cap. 40.

P. 4. 43. Eliz. 2. ANy one of those Iustices of Peace who may appoint Overseers for the poore, may also send to the house of correction, or cõmon Gaole, such as will not imploy themselves in work, being thereunto appointed by the Overseers, according to the Statute 21. *Iac. cap.* 28. *One Iustice.*

43. Eliz. 2. Two (or more) Iustices of Peace, whereof one to be of the *Quorum*, dwelling in or neere the Parish or division, &c. shall yeerely within one moneth after Easter, under their hands and seales, appoint foure, three, or two substantiall Housholders in every Parish, to be Overseers of the poore within the same Parish, who shall joyne with the Church-wardens therein. 21. *Iac. cap.* 28. *Two Iustis. sufficient.*

The Iustices of Peace which have the appointing of these Overseers, must therein be carefull to chuse such men as in every Towne are fittest: *sc.* substantiall persons, having competencie of wealth, wisedome, and a good conscience. And indeed, this name and office of Overseers, may beseeme the best, and not the meanest men (it being a name and office of great antiquitie & excellencie, as you may see 1 *Chr.* 23. 4. *Acts* 20. 28. and *Acts* 6. 3, 5.) And though the persons are dignified according to the singularitie of the subject; yet this is not the least office to be called Overseers of the poore. For as God himselfe hath a speciall respect to the miseries of the poore; so they be like God which provide for the necessities of the poore.

These Overseers and Church-wardens (or the greater part of them) with the consent of two or moe such Iustices, shall take order from time to time, for setting their poore on worke, putting out Apprentices, and releeving their impotent, as followeth: *The Overseers dutie.*

P. 23. 1. First, for setting to worke the children of all such, whose Parents shall not by the greater part of the said Overseers bee thought able to keepe and maintaine their children; which children they, or the greater part of them, by the assent of two such Iustices, may also put out to bee Apprentices, *sc.* the men children till their age of 24. and the women children till their age of 21. yeeres, or the time of their marriage. *Apprentices*

And all poore children so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding. See 1. *Iac. cap.* 25. & 21. *Iac.* 28. & 3. *Car.* 4. but such binding must be by Indenture. See *antea tit. Labourers, Cromp.* 184. *b.* And see the forme of such an Indenture, *hic postea, cap.* 128.

2. For setting to worke all such persons (maried or unmaried) as, having no meanes to maintaine them, use no ordinary and daily trade of life, to get their living by. *Idle persons*

Such also as can get no worke, are by the Overseers to be set on worke. And any one Iustice of Peace may send to the House of correction, or Common Gaole, such as shall not imploy themselves to worke, being appointed thereto by the Church-wardens and Overseers of the poore of the Parish. 43. *Eliz. cap.* 2.

Now the placing of such Apprentices, and the setting and holding the poore

poore to worke, is the more proper and true duty of Overseers: for otherwise their bare gathering, or raising of a stocke, is to little purpose.

And note, that the Church-wardens and Overseers of the poore may by and with the consent of two or more Iustices of Peace (whereof one to be of the *Quorum*) &c. set up, use, and occupie any Trade, Mystery, or Occupation, only for the setting on work, and better releefe of the poore of the Parish, Town, or place, where they are Overseers, &c. 3. *Caroli, ca.* 4.

Impotent. 3. For releeving such poore amongst them as are poore and impotent or not able to worke.

But this releeving of poore, and impotent persons must be such, as that they neither be forced to beg, or steale; nor so little as that it may be a lingring death to them.

And to these purposes the said Overseers are inabled to raise weekly, or otherwise (by taxation of every inhabitant, Parson, Vicar, and other, and of every Occupier of lands, houses, tythes, mines, or saleable underwoods (proportioning them to an annuall benefit, &c.) in the same Parish, such competent summes of money as they shall thinke fit, therewith to provide a convenient stocke of some ware or stuffe, to set the poore on work, and also competent summes of mony towards the necessary releefe of their lame, impotent, old, blinde, and other poore not able to worke: and for the putting out of such children (as aforesaid) to be Apprentices. *43. Eliz. c. 2.*

The office then of these Overseers consisteth principally in two things.

1. In raising contributions of money for the releefe of the poore.

2. In the disposing thereof according to Law and good discretion.

And in these taxations there must consideration be had, first to equality, and then to Estates.

Equalitie, that men bee equally rated with their neighbours, and according to an equall proportion.

Estates, that men be rated according to their estates of goods knowne, or according to their knowne yeerely value of their lands, Farmes, or occupyings, and not by estimation, supposition, or report. Also herein the charge of family, retinue, and countenance, is in some measure to bee regarded: for if one valued at 500. li. in goods hath but himselfe and his wife, and another estimated at 1000 li. hath wife and many children, &c. the first man by reason is to bee rated as much as the other: And so of lands: *Temen quare* what the Law is in such cases.

The causes of these taxations is three { To set the poore on worke by a stocke, &c. / To releeve the impotent, } by money. / To put forth Apprentices, }

And this last, *sc.* the putting forth and taking of Apprentices, may well bee termed a speciall worke, and Seminarie of mercie.

But in putting forth of these Apprentices, there must bee regard had, to the Master, the childe, and the parents.

The Master, *sc.* his ability and honestie: otherwise by some device, or hard intreatie, they may provoke their Apprentices to depart, or run away.

Secondly, his trade or faculty, lest the Apprentice consume his time without learning any thing.

To these two, the Iustices of Peace must have an eye.

The

The childe, *ſc.* to put them out timely, and while they are young and tractable (ſo as they be above the age of ſeven yeers) otherwiſe by reaſon of their idle and baſe educations, they will hardly keepe their ſervice, or imploy themſelves to worke.

The parents, *ſc.* to take away ſuch as are brought up to live idly and looſely, or elſe ſuch as are a burthen and charge to their Parents.

Againe, concerning the Maſters; all perſons of abilitie are compellable to take Apprentices, according to this Statute; yea, if they bee of abilitie, though they have but a houſe or ſleeping place in the Towne, they are chargeable.

And Clergy men are not herein exempted, but may have Apprentices put to them; and this was the opinion of all the Iudges, upon two ſeverall references to them lately made from the Kings Majeſtie (as I have beene credibly informed.) or at leaſt they are chargeable to conteribute to the putting out of Apprentices: See the words of the Statute of 43. *Eliz. cap. 2. hic antea.*

Note alſo, that as this Statute enableth the Church-wardens and Over-ſeers (with the conſent of two Iuſtices of Peace) to put out Apprentices, ſo it doth enable them to place thoſe Apprentices with Maſters; for without Maſters, there can be no Apprentices. And the ſaid Iuſtices may compell all ſuch as bee of abilitie, to take ſuch Apprentices (according to their diſcretion) and if any ſuch Maſter ſhall refuſe to take ſuch Apprentice, ſo to him appointed, the ſaid Iuſtices may binde ſuch Maſter over to the next generall Goale delivery, there to anſwer ſuch default; And this was the direction of Sir *Henry Montague* Knight, chiefe Iuſtice of the Kings Bench, at Cambridge Aſſiſes, *Anno Dom.* 1618. wherewithall agreed Sir *Nicholas Hyde*, and Sir *Francis Harvie*, Iudges of Aſſiſe at Cambridge Summer Aſſiſes, *Anno* 1617.

Alſo the Statute of 43. *Eliz.* 2. ſeemeth to warrant as much, the words of which Statute to this purpoſe are thus: Bee it further enacted, that it ſhall be lawfull for the Church-wardens and Over-ſeers, or the greater part of them (by the aſſent of two Iuſtices of Peace) to bind any ſuch children to be Apprentices, where they ſhall ſee convenient. *Plus his antea.*

Or elſe the ſaid Church-wardens and Over-ſeers (with the conſent of the ſaid Iuſtices) as it ſeemeth, may impoſe upon ſuch Maſter (refuſing to take ſuch Apprentice) a competent ſumme of money, for the putting out of ſuch an Apprentice elſewhere. And upon the Maſters refuſall to pay ſuch mony, two ſuch Iuſtices may take their warrant to levy the ſame by diſtreſſe, and ſale of the offenders goods, &c. See *Poulton* 2. 4.

Or the refuſers to take Apprentices, may bee preſented, and indicted for the ſame, upon the Statute of 43. *Eliz.* at the Aſſiſes or Seſſions of the Peace, as it ſeemeth.

An Apprentice put to a man in regard of a farme, when his Leaſe expireth, his Apprentice muſt goe ſtill with the farme, if the firſt Maſter will: Otherwiſe where the Apprentice is put to a man in regard of his abilitie, or for other reſpect.

If the Parents of poore children ſhall refuſe to ſuffer their children to be put forth (without good cauſe ſhew'd) ſuch parents alſo may be bound over

over by the Iuſtices, to anſwer their ſaid default: And if the Apprentices ſhal refuſe, the Iuſtices may ſend thē to the houſe of correction, *quouſq; &c.*

Note that if the Maſter ſhall put his Apprentice into apparell, it is a gift in Law, and hee cannot after take it away, though hee ſhould part with his Apprentice, &c. *Br. Trus.* 93.

An Apprentice which runneth from his Maſter, or ſhall bee otherwiſe diſordered, may bee ſent to the houſe of correction, by any Iuſtice of Peace: or elſe by order from the Seſſions. See *hic cap.* 31.

The Overſeers account.

Two ſuch Iuſtices ſhall take the account of ſuch Overſeers, at the end of their yeere, and of the Church-wardens, in every of theſe particulars following. P. 2.

1. Of all ſummes of mony by them received, or rated, and not received.

2. Of all ſuch ſtocke of ware or ſtuffe, as they, or any of the poore have in their hands.

3. What Apprentices they have put out and bound, according to the Statute.

4. What poore they have ſet to worke, or releeved.

5. Whether they have ſuffered any of their poore to wander and beg out of their Towne, or in the High-wayes, or in their Towne without their direction. See for this 39. *El.* 3. & 4. & *Lambt.* 206. *Reſol.* 15.

6. Whether they have monethly met to conſider of theſe things.

7. Whether they have aſſeſſed the Inhabitants, and occupiers of lands, &c. in their Pariſh, *ſt.* all ſuch as are of ability, and with indifferency. Lamb. 421.

8. Whether they have endeboured to levie and gather ſuch aſſeſſements. Ibid.

9. Whether they have been otherwiſe negligent in their offices within which words alſo, there ſeemeth to lye included, if they ſhall neglect to execute the Iuſtices Warrants to them, or any of them directed, for the levying of any forfeiture according to this Statute. See *P.* 2. & 12.

Overſeers defaults.

Now if the Church-wardens, or either of them, or any of the Overſeers, ſhall refuſe to make and yeeld a true and perfect account to the ſaid Iuſtices, of all ſuch ſummes of money, and of all ſuch ſtocke, as aforeſaid; any two ſuch Iuſtices may commit them to the common Gaole, there to remaine without baile, till they have made a true account, and ſatisfied and paid (to the new Overſeers) ſo much of the ſaid ſumme and ſtocke, as upon the ſaid account ſhall be remaining in his (or their) hands, &c. And if they make a falſe account, they may be bound over to the Aſſiſes, or Seſſions, and there an Indictment may be preferred againſt them. P. 24.30.

Alſo if any of the Church-wardens, or Overſeers, ſhall refuſe, or deny to pay and deliver over to the new Overſeers, the arerages (ſummes of money, or ſtocke) which ſhall be in their hands, and due and behinde upon their account to be made as aforeſaid, any two ſuch Iuſtices of Peace may make their Warrant, to the preſent or ſubſequent Church-wardens and Overſeers, or any of them, to levie the ſame by diſtreſſe, and ſale of the offenders goods, rendring to the parties the overplus; and in defect of ſuch diſtreſſe, any two ſuch Iuſtices of Peace may commit him or them to the common Gaole, there to remaine without baile, untill payment or delivery of the ſaid ſumme, arerages and ſtocke be made. P. 24.

If any ſuch ſtocke ſhall be in the hands of any the poore to worke, and Ibid.

ſuch poore ſhall refuſe to deliver the ſame, it ſeemeth any two ſuch Iuſtices may make the like Warrant to levie the ſame by diſtreſſe, and in defect thereof may commit ſuch offenders, as aforeſaid.

P. 2. And as for other the negligences of the Church-wardens and Overſeers in their Office, or in the execution of the orders aforeſaid, every of them making default, ſhall forfeit for every ſuch default xx.s. (but it ſeemeth ſuch default muſt be proved either by the offenders confeſſion, or by examination of witneſſes) which forfeitures ſhall be levied (by the P. 12. new Church-wardens and Overſeers, or one of them) by Warrant from any two ſuch Iuſtices of P. by diſtreſſe and ſale of the offenders goods, &c. or in defect of ſuch diſtreſſe, it ſhall be lawfull for any two ſuch Iuſtices of P. to commit the offender to the common Gaole, there to remaine without baile, till the ſaid forfeitures ſhall be paid: And the ſaid forfeitures be imployed to the uſe of the poore of the ſame Pariſh.

Two ſuch Iuſtices of Peace are to allow the cauſe, or excuſe of ſuch Overſeers, as ſhall not meet every moneth, to conſider of the premiſſes, or as ſhall be otherwiſe negligent in their office, *Lamb. edit. 1614. pag. 360.*

Two ſuch Iuſtices may make their Warrant (as well to the preſent as ſubſequent Overſeers and Church-wardens, or to any of them) to levie all ſuch ſummes of money, and all arerages; (of every one that ſhall refuſe to contribute according as they ſhall be aſſeſſed) by diſtreſſe and ſale of the offenders goods (rendring to the partie the overplus:) And in defect of ſuch diſtreſſe, ſuch two Iuſtices may commit him or them to the common Gaole, there to remaine without baile, till payment be made of the ſaid ſumme and arerages. *Refuſers to pay their rates.*

If the ſaid Iuſtices doe perceive, that any Pariſh is not able to relieve their poore, then any two ſuch Iuſtices may tax and aſſeſſe any other perſons within the Hundred (where the ſaid Pariſh is) to pay ſuch ſummes of money to the Overſeers of the ſaid poore Pariſh, for the ſaid purpoſes, as the ſaid Iuſtices ſhall thinke fit, according to the intent of this Law.

He that ſhall bring any poore to any Towne, which are burdenſome to the Towne, may be raiſed in his rates towards the reliefe of the poore of that Pariſh. Sir *Nicholas Hide*.

Yea Landlords taking into their houſes poore perſons (out of the Pariſh) like to burthen the Pariſh, if the Landlord will not ſecure the Pariſh, &c. Then may he be charged towards the reliefe of the poore of that Pariſh to the value of his rent reſerved; or according to the charge they ſo bring into the Pariſh.

If any perſons finde themſelves grieved with any taxe, or other act done by the Overſeers, or by the ſaid Iuſtices of Peace, they are to be relieved at the Quarter Seſſions.

Head Officers of Cities and Corporate Townes (being Iuſtices of Peace) have the ſame authoritie within their limits, as herein is limited to Iuſtices of Peace of the County, &c. And no other Iuſtices of Peace are to enter or meddle there. *Corporate Townes.*

If any Pariſh ſhall extend into two Counties, or part thereof to lie in any Citie or Corporate Towne where they have Iuſtices, Then the Iuſtices of every County, &c. ſhall intermeddle onely within their owne limits:

limits: And every of them reſpectively within their limits, are to execute this Law concerning the nomination of Overſeers, binding of Apprentices, giving Warrants to levy taxations, taking account of Overſeeers, & committing ſuch as refuſe to account, or to pay their arrerages: And yet the ſaid overſeers ſhall, w^th^out dividing theſelves, execute their office in all places within the ſaid pariſh, but ſhall give up ſeverall accounts, &c.

The Father, and Grand-father, and Mother, and Grand-mother, and the Children, and Grand-children of every poore impotent perſon, or other poore perſon not able to worke, being of ſufficient ability, ſhall relieve ſuch poore perſons in ſuch manner as the Iuſtices of Peace (of that Countie where ſuch ſufficient perſon dwelleth) at their generall Quarter Seſſions ſhall aſſeſſe, upon paine that every one failing therein, to forfeit twentie ſhillings for every moneth: the ſaid forfeiture to be levied by the Church-wardens and Overſeers, or one of them, by Warrant from any two ſuch Iuſtices of Peace (the one being of the *Quorum*) within their limits, by diſtreſſe and ſale, as aforeſaid: and in defect of diſtreſſe, any two ſuch Iuſtices may commit the offender to priſon, there to remaine without baile, till the ſaid forfeiture be payd. And the ſame forfeiture ſhall be imployed to the uſe of the poore of the ſame Pariſh.

Reſol. 16, 17. P. 8. P. 12. 43. Eliz. 2.

Now for the better furtherance of this ſo needfull and charitable a ſervice, and for the better helpe as well of the Iuſtices of Peace, as of the Overſeers, &c. I thought it not amiſſe to ſet downe here certaine reſolutions and advices of the Iudges (as I finde them in M. *Lambard*) together with certaine other obſervations to this purpoſe.

If there be but one Church-warden in the pariſh, he ſuffiseeth with the other Overſeers. Reſol. 20.

If the parents be able to worke, and may have worke, they are to finde their children by their labour, and not the Pariſh: But if they be overburthened with children, it ſhall be a very good way to procure ſome of them to be placed Apprentices, according to the Statute. And ſuch Apprentices would be put out to Husbandry, and Huſwiverie. Reſol. 8.

Young children, whoſe parents are dead, are to be ſet on worke, relieved, or maintained, at the charge of the Towne where they were dwelling at the time of the death of their parents, and are not to be ſent to their place of birth, &c. For if the parents were not Rogues, wee may not make the children rogues, except they wander abroad and beg. This was the direction of *Flemming*, chiefe Iuſtice, in a caſe betweene *Weſton* and *Cowledge*. *An.* 11. *Iac. Regis.*

If any (not being Rogues) ſhall travell with their children thorow a Towne, and the Father or Mother die, or run away, that Towne is not bound to keepe their children, nor to ſend them away, but onely in charitie, except they become wandring beggers. Reſol. 7.

A travelling woman, having a ſmall childe ſucking upon her, is apprehended for Felonie, and ſent to the Gaole, and is after arraigned and hanged, this childe is to be ſent to the place of its birth, if it can be knowne, otherwiſe it muſt be ſent to the Towne where the Mother was apprehended; for that that Towne ought not to have ſent the childe to the Gaole (being no Malefactor) and ſo was it delivered by Sir *Nicholas Hyde*,

Hyde, at Cambridge Lent Aſſiſes, *Anno* 3. *Caroli Regis*.

Reſol. 10. Such perſons as bee of any Pariſh, and have able bodies to worke, if they refuſe to worke at ſuch wages as is taxed, or commonly given in thoſe parts, are to bee ſent to the Houſe of Correction, and not to their place of birth, or laſt dwelling by the ſpace of a yeere. But if they have any lawfull meanes to live by, though they be of able bodies, and refuſe to worke, yet are they not to be ſent to the Houſe of Correction.

Reſol. 15. 39. Eliz. 3. None may be ſuffered to take reliefe at any mans doore, though within the ſame Pariſh, unleſſe it be by the order of the Over-ſeers: neither may any be ſuffer'd to beg by the highwaies, though in their own pariſh.

Reſol. 9. No man is to be put out of the Towne where hee dwelleth, nor to bee ſent to their place of birth (or laſt habitation) but a vagrant Rogue: Nor to be found by the Towne, except the partie be impotent; but ought to ſet themſelves to labour, if they be able, and can get worke: if they cannot get worke, the Overſeers muſt ſet them to labour.

And ſo of them that have or ſhall have houſes, when their eſtates bee expired: And ſervants, whoſe times of ſervice are ended, though they cannot get houſes: For they muſt provide themſelves houſes anew, if they be not impotent. *ibid.*

So that ſuch perſons, whoſe eſtates of their houſes be expired, and ſervants when their ſervice is ended, they ſhall not be put out of the Towns where they ſo laſt dwelt or ſerved: Neither are they to bee ſent from thence to their place of birth or laſt habitation, but are to be ſetled there to work, being able of body, or being impotent, are to be there relieved: And yet if ſuch perſons ſhall wander abroad begging out of that Pariſh, then they may be ſent as vagabonds (from the place where they ſhall be taken wandring, or begging) to their place of birth, &c.

But for the placing and ſetling of theſe poore people (who now for want of charitie, are much ſent and toſſed up and downe from Towne to Towne, and from Country to Country) it hath beene holden by ſome, that it is in the power of the next Iuſtice of Peace to give order therein: And that upon Appeale from him, the Iuſtices of Peace at the Quarter Seſſions may fully take order therein: and that their order made in Seſſions will not eaſily be avoyded.

But S. *Fr. Harvey* at Summer Aſſiſes at Cambr. *An.* 1629. did deliver it, that the Iuſt. of P. (eſpecially out of their Seſſions) were not to meddle either with the removing or ſetling of any poore, but onely of Rogues.

If a man hireth an houſe in A. and being there with his wife and children, hee afterwards ſhall binde himſelfe as a ſervant with B one dwelling in B. yet are not his wife and children to be ſent to B. or placed there, but are to remaine ſtill at A. where they were once ſetled. Otherwiſe if the husband hath hired an houſe in B.

A Maid-ſervant gotten with childe at A. by her fellow-ſervant (or by another yong man of the ſame Towne) after both their times of ſervice expireth, and they marrie, and then the yong man is remained at B. when the woman is delivered of her childe, ſhe with her childe are to bee ſent to the father at B. and there they are to be ſetled.

Note by an old Law, hee which commeth gueſt-wiſe to an houſe, and

there lyeth the third night, is called an *Hogbenhine* or *Agenhine*; and after the third night, he is accompted one of his family in whose house he so lyeth: and if he offend the Kings Peace, his Oast must bee answerable for him. *Termes de Ley*.

Such as shall remove or put any out of their Parish, that be not to be put out, this is against the Statute concerning the relieſe of the poore, and finable; And if any have beene so sent, they may bee sent backe againe. Resol. 11.

Now this fine seemeth to bee by force of the Statute 39. *Eliz. cap.* 4. and to amount to five pounds. And is to be levied by distresse and sale of the offenders goods, upon a Warrant under the hands and seales of any two Iustices of Peace, either upon the confession of the offenders, or else upon the testimonie of two sufficient witnesses. P.Vag.5.11.

All such persons as in any wise shall disturbe the execution of this Law, concerning Rogues, or the relieſe, or setling of poore impotent persons, shall forfeit five pounds; and any two Iustices of Peace may binde such offenders to their good behaviour; and may also by Warrant under their hands and seales, cause the said five pounds to bee levied by distresse and sale of the offenders goods, as aforesaid: which forfeiture the said two Iustices also, by their discretion may order, to bee imployed to the relieſe of the poore where the offence shall bee committed, or to the maintenance of the house of correction, &c. *quare* for this forfeiture, for that the Stat. 39. *El. cap.* 3. made for the relieſe of the poore, is expired. 39.Eliz.4. P.Vag.5.11.

Next, here is consideration to bee had of three sorts or degrees of poore.

1 Poore by impotencie and defect.

1. The aged and decrepit, that are past labour.
2. The infant, fatherlesse and motherlesse, and not able to worke.
3. The person naturally disabled, either in wit, or member, as an Ideot, Lunatick, Blind, Lame, &c. not being able to worke.
4. The person visited with grievous disease, or sickneſse though casually, yet thereby for the time being impotent.

All these (being impotent & not able to work (are to be found and provided for by the overseers, of necessary relief, and are to have allowances proportionable, and according to the continuance and measure of their maladies, and needs: and of these it may be said, *Si non pavisti, occidisti*.

2 Poore by casualtie.

1. The person casually disabled, or maimed in his body, as the Souldier, or Labourer, &c. maimed in their lawfull callings.
2. The housholder decayed by casualtie of fire, water, robbery, suretiship, &c.
3. The poore man overcharged with Children.

All these last (and such others) having abilitie and strength of body, but not sufficient meanes to maintaine themselves, are to bee holden, or set to worke by the Overseers, and being not able to live by their worke, are in charitie further to be relieved in some reasonable proportion, according to their severall wants and necessities.

3 Thriftleſse

3 Thriftleſſe poore.

1. The riotous and prodigall perſon, that conſumeth all with play, or drinking, &c.
2. The diſſolute perſon, as the Strumpet, Pilferer, &c.
3. The ſlothfull perſon, that refuſeth to worke.
4. All ſuch as wilfully ſpoyle or imbeſill their worke, &c.
5. The Vagabond that will abide in no ſervice or place.

For all theſe laſt, the houſe of correction is fitteſt: And there ſuch perſons being able in body, are to be compelled to labour; that by labor and puniſhment of their bodies, their froward natures may be bridled, their evill minds betterd, and others by their example terrifi'd. Alſo the rule of the Apoſtle is, That ſuch as would not work, ſhould not eat, 2 *Theſ.* 3. 10.

And all ſuch perſons ſent to the Houſe of Correction, muſt there live by their owne labour and worke, without charging the Town, or Country, for any allowance, ſee to that purpoſe the Statute 7. *Iac. cap.* 4.

But for the Over-ſeers to ſuffer ſuch perſons, (or any other perſons, which can live of their labours or otherwiſe) to bee chargeable to the Towne, or to relieve ſuch, were a meanes to nouriſh them in their lewdneſſe, or idleneſſe, which take it; and to rob others of reliefe that want it, to wrong thoſe of their money that pay it, and to condemne them of overſight which diſpoſe it.

And yet if any of theſe laſt happen to proove impotent, as alſo in caſes of manifeſt extremitie, it ſeemeth they are to be relieved by the Towne: But I leave that to better conſideration.

3 Iac. 3. Where any ſummes of money (at any time within three yeers before the making of the Statute 7. *Iac. cap.* 3.) have beene given, or hereafter ſhall bee given to bee continually imployed for the binding out of Apprentices unto Trades and Occupations, the Parſon, or Vicar, Conſtables, Church-wardens, and Over-ſeers for the Poore, in Townes not incorporate, or the moſt part of them, are by the Statute appointed to have the diſpoſing of ſuch ſtockes or ſummes of money: which perſons ſhall once every yeere, within one moneth after Eaſter day, make a true and perfect account before two or moe Iuſtices of Peace, (dwelling in or next to every the ſaid Townes or Pariſhes) of all ſuch ſummes as they have ſo imployed, and of all bonds taken for the payment thereof, and of all ſummes remaining in their hands and not imployed.

39 Eliz. 4. 1 Iac. 25. Two Iuſtices of Peace may licence poore diſeaſed perſons to travell to the baths for remedie of their griefes; ſo as they be provided of neceſſarie releefe (*ſc.* with money in their purſes, &c.) for their travell, and beg not. See hereof *poſtea tit. Rogues cap.* 47. *Licenced to travell.*

39 Eliz. 4. 39 Eliz. 17. The Iuſtice of Peace dwelling neere where any perſon ſuffering ſhipwracke ſhall land, or where any poore Souldier or Mariner ſhall land, may, and ought to make a teſtimoniall under his hand to ſuch perſons, of their landing, &c. and thereby to licenſe them to paſſe the next direct way to their place of birth or dwelling, &c. limiting them therein a convenient time for their paſſage. See the title *Rogues.*

But it ſeemeth no Iuſtice or Iuſtices of Peace may or can in any caſe licence any poor man to wander or beg at all; nor may licence any poore

to travell, but onely in theſe former three laſt caſes, See the title *Rogues.*

Here I thought it not amiſſe ſhortly againe to obſerve ſuch offences, as the Iuſtices of Peace out of their Seſſions are to deale withall, and where the forfeitures (or part thereof) are given by the Statute to the uſe of the poore of the Pariſh where the offences be committed.

Alehouſes. Ale-houſe keepers, and In-keepers, &c. ſuffering Townesmen, or any other perſon to continue drinking in their houſes, the forfeitures ſhall be to the uſe of the poore of that Pariſh, &c. See before *tit. Ale-houſes &* 21. *Iac. cap.* 7. 1 Iac. 9.

So of Ale-houſe keepers without licence. *Ibidem.*

So of Ale-houſe keepers, &c. ſelling leſſe than one quart of their beſt Beere or Ale for 1.d. and two quarts of their ſmall for 1.d. See *ibid.*

So of Townesmen, or others, tippling in Ale-houſes, &c. See *ibid.* 4 Iac. 1

So of Conſtables, &c. not levying the forfeitur's of the offendors aforeſaid, or not whipping the offenders, upon the Iuſtices Warrant, See *ibid.* 1 Iac.

So of perſons convinced of drunkenneſſe. *Ibid.*

Cloth. So the mony made upon ſale of Teinters, or other like engines (found by the Iuſtices of Peace, or by the overſeers of cloth.) See *tit. Cloth, antea.*

All penalties and forfeitures for want of length, bredth, and weight of Cloth, limited by any former Act now in force, or by this preſent Act, ſhall be diſtributed into three equall parts, whereof two parts ſhall bee unto the poore of the Pariſh where the ſaid Cloth ſhall bee made, to bee levied by Warrant made by two Iuſtices of Peace, (directed to the Church-wardens and over-ſeers of the poore of ſuch Pariſh) by way of diſtreſſe, and ſale of the offenders goods, &c. 21. *Iac. cap.* 18.

Fiſh. The moitie of the forfeiture for deſtroying the ſpawne of Sea-fiſh. See *tit. Fiſh, antea.*

The fleſh in Lent time, found in any victualling houſe (upon the Iuſtices ſearch.) *Vide tit. Fiſh-dayes.*

Feſants. Partridges. Taking, or deſtroying of any Feſant, Partridge, or other Fowle. *Vide tit. Partridges.*

Taking, or deſtroying the Egges of any Feſant, Partridge, or Swan. See *ibidem.*

Meeting of people out of their owne Pariſhes on the Sunday, for any ſport or paſtimes whatſoever. *Vide tit. Games.*

Uſing any unlawfull games or paſtimes within their owne Pariſh, by any perſon upon the Sunday. *Vide ibidem.*

Taking, deſtroying, tracing, or courſing in the ſnow, of any Hare. ſee *ib.*

Keeping of any Grey-hound, ſetting Dog, or Net, to take Partridges or Feſants, contrary to the Statute. See *ibidem.*

Selling of any Deere, Hare, Partridge, or Feſant: See *ibidem, & vide Stat.* 1. *Iac. cap.* 27.

Hawking betweene the firſt day of July, and the laſt of Auguſt. *Vide titulo Partridges.*

Poore. Over-ſeers of the poore, negligent in the execution of their Office. See before in this title, *Poore.*

Parents, or children, failing to relieve each other, as ſhall be ordered at the Seſſions. See *ibidem.*

Such as ſhall put out any of their Pariſh, that bee not to bee put out. See *ibid.*

Such

Such as ſhall any wayes diſturbe the releeſe, or ſetling of the poore. See *ibidem.*

Perſons abſenting themſelves from Church upon any Sunday. *Vide titulo Recuſants.* 3. *Iac. cap.* 4. *Recuſants.*

Perſons diſturbing the execution of the Law made 39. *Eliz.* concerning the puniſhing, or conveying of Rogues. *Vide tit. Rogues.* *Rogues.*

Sending Rogues by a generall Paſport. See *ibid. Reſol.* 13.

Conſtables not receiving a Rogue, to convey him according to the Statute. See *ibidem.*

If a Rogue ſhall not be delivered to the next Conſtable, to be conveyed ſtill forward, &c. See *ibidem.*

If a Rogue be ſent to the Towne whereto he ought, and be there refuſed. See *ibid. Reſol.* 12.

The Miniſter not keeping a Regiſter-booke, and therein entring everie Teſtimoniall made for the conveying of Rogues puniſhed in his Pariſh. See *ibidem.*

Conſtables not doing their beſt endevour for the apprehending, puniſhing, and conveying of all Rogues. See *ibidem.*

The Conſtable which ſhall not puniſh a Rogue, &c. brought to him, ſhall forfeit 20.s.

Everie perſon that ſhall not apprehend Rogues reſorting to his houſe. See *ibidem.*

Every perſon bringing into this Realme any Rogue. See *ibidem.*

Prophane ſwearing and curſing. See *tit. Swearing.*

Carriers or Drovers travelling upon the Sunday.

And Butchers killing, or ſelling upon that day. *Hic cap.* 49.

Preachers. CAP. 41.

1 Mic. 1. C. 3. P. 1. 2.

IF any perſon ſhall of his owne authority, willingly and of purpoſe, by open act, maliciouſly diſturbe any Preacher in the time of his Sermon, or other Divine Service, or ſhall be ayding, procuring, or abetting thereto; or ſhall reſcue any ſuch offender being apprehended, or ſhall diſturbe the arreſting of any ſuch offender; and that any of the ſaid offenders ſhall be brought before any Iuſtice of Peace (within the County where the ſaid offence ſhall bee committed) then everie ſuch Iuſtice of Peace (upon due accuſation therupon made) ſhall forthwith commit every ſuch offender (ſo brought before him) to ſafe cuſtody, by his diſcretion.

Ibid. Within ſix daies (after accuſation had of any of the ſaid offences, and after the committing of the ſaid offender to ſafe cuſtody by one Iuſtice of the Peace) one other Iuſtice of the Peace of that Shire muſt joyne with the firſt Iuſtice in the examination of the ſaid offence; and if they two upon their examination ſhall finde the party accuſed guilty (and that by two ſufficient witneſſes, or by his owne confeſſion) then ſhall they commit him to the Gaole, there to remaine without baile, for three months then next enſuing: and further to the next Quarter Seſſions, &c. But inquire, if all this Statute be not repealed by 1. *Eliz. cap.* 2. in generall words at the latter end thereof. *Lambt.* 199. yet it ſeemeth not to be repealed in this matter, *ſc.* for diſturbance of Preachers: for this Statute *Two Iuſtices.*

tute

tute containeth divers ſeverall matters, and ſo divers Statutes *Cromp.* 14.

And yet Sir *Nicholas Hyde*, at Burie, Lent Aſſiſes, *Ann.* 1629. delivered it (as I am credibly informed) that this Statute was wholly repealed, by the Statute made 1. *El. cap.* 2.

Propheſies. CAP. 42.

IT ſeemeth by the generall words of the Statute, that every Iuſtice of Peace may impriſon (by the ſpace of one yeere, without baile) ſuch as adviſedly ſhal publiſh any falſe Prophecies (contrarie to the tenour of the Statute 5. *El.* 15.) to the intent thereby to make any rebellion, inſurrection, or other diſturbances within the Kings Dominions. P. Iuſt. 24. P. Proph. 2.

Priſon. CAP. 43.

ANy Iuſtice of Peace, having ſent or committed to the Gaole, an offender (for any offence or miſdemeanour) if the offender (having meanes or ability thereto) ſhall refuſe to beare and defray the charges of ſuch as ſhall convey and guard him or them to ſuch Gaole, or ſhall not at the time of their commitment, pay or beare the ſame, Then the ſaid Iuſtice may give his Warrant under his hand and ſeale (to the Conſtable of the Hundred, or Conſtable of the Towne, where ſuch offender ſhall be dwelling, or from whence he ſhal be committed, or where the ſaid offender ſhall have any goods within that Countie or libertie) to ſell ſo much of the offenders goods, as by the diſcretion of the ſaid Iuſtice will ſatisfie ſuch charges, &c. the appraiſement to be made by foure Inhabitants of the Pariſh where ſuch goods be, yeelding to the partie the overplus of the money: And where the offender hath no ſuch goods, then the charge thereof muſt bee borne by the Towne where the offender was taken. And the taxation made on the Towne for that purpoſe, muſt bee allowed under the hand of one Iuſtice of Peace; And by like Warrant from ſuch Iuſtice, the goods of the perſon refuſing to pay ſuch taxation, may be diſtrained and ſold. 3. Iac. 10. P. 7, 8.

Purveyors. CAP. 44.

IF any perſon within five miles of Cambridge or Oxford, ſhall refuſe reaſonably to ſerve the proviſion of the ſaid Univerſities, then may the Vice-Chancellor, and any two Iuſtices of Peace within the ſame Univerſity, Town, or County, under their hands and ſeals, allow any the K. Purveiors, to provide any corn or victual of any ſuch perſon, to the uſe of the K. as they lawfully may in other places, without the ſaid Precinct. 13. H. 6. 12. P. 33. 3. Iac. 25. 21. Iac. 28. 3. Car. 4.

The Vice-Chancellor (or his Commiſſary for the time being) in either of the Univerſities, with any two Iuſtices of Peace of the ſame Countie, may by the oaths of twelve men, enquire of, and puniſh the offences of Purveyors, Takers, Badgers, Loaders, Poulters, or other miniſters for the Kings Majeſtie, and of all other common Poulters, &c. committed contrary to the Statutes for the priviledges of the Univerſities, &c. *ſc.* In taking or bargaining for any Victuall or Graine, within Cambridge or Oxford, or within five miles of either of them; or in taking or bargaining for any Victuall or Grayne, bought within the ſaid five miles, by 28 H. 8. cap. 15. 13. Eliz. 21. P. Iuſt. 60. P. Purv. 32.

by any common miniſter of any Colledge or Hall, to bee ſpent there; without the licence of the Chancellor, or Vice-Chancellor in writing, under the ſeale of their Office; or not according to ſuch licence: and every ſuch offender ſhall forfeite the quadruple value of ſuch graine or victuall, ſo taken or bargained for, and ſhall ſuffer impriſonment three months without baile; which puniſhments the ſaid Vice-Chancellor, &c. and two Iuſtices of Peace may ſee duely executed accordingly.

23 H. 6. c. 14. If any buyer, or other Officer of any Lord, or other perſon (but only for the King and Queen, and their houſes) do take any victuall, coin, hay, cariages, or any other thing whatſoever, of any of the Kings people, in any wiſe againſt their will (without lawfull bargaine betweene the ſaid buyer and the ſeller made) then upon requeſt made to the Maior, Sheriffe, Bailiffe, Conſtable, Officer, or other the Kings Miniſters (under which word * Miniſters, the Iuſtices of Peace bee alſo comprehended) of the Cities, Boroughs, Counties, or places where ſuch taking ſhall happen to bee, the ſaid Maior, Sheriffe, Miniſter, and Juſtice of Peace, ſhall preſently take and arreſt ſuch buyer and officer ſo offending, and them ſhall ſend to the Kings next Priſon, there to remaine without baile, untill they have delivered the ſaid goods ſo taken, or the value thereof.

* Crump. 62.

See more of Purveyors, *tit. Felonies by Statute.*

Recuſants. CAP. 45.

23 Eliz. 1 p. 1. IF any perſon above ſixteene yeeres of age, doe forbeare to come to Church by the ſpace of twelve months, contrary to the Statute 1. *El.* 2. Any Iuſtice of Peace of the Countie where ſuch an offender ſhall dwell or be, may make thereof certificate into the Kings Bench, to the end ſuch offenders may there be bound to their good behaviour. *One Iuſtice*

35 Eliz. 2. P. 19. Any one Iuſtice of Peace may require the ſubmiſſion and declaration of conformity to his Majeſties Lawes, of Recuſants and Sectaries, within three moneths after their conviction, &c. And in default of ſuch ſubmiſſion, may require them to abjure this Realme: which Abjuration notwithſtanding ſhall be in open Seſſions, 21. *Jac. cap.* 28.

For the form of ſuch ſubmiſſion, ſee the Stat. of 35 *El. c.* 1. *P. Recuſants* 20.

No woman covert, or married woman, ſhall bee forced to abjure, by vertue of this Statute.

Where one Iuſtice of Peace may require a Popiſh Recuſant to take the Oath of Allegeance: See *poſtea* in this title.

27. Eliz. 2. P. Ieſuits. 7 Any Iuſtice of Peace within the countie, in which any Ieſuite or other Popiſh Prieſt, or other Eccleſiaſticall perſon ſhall arrive or land, within three daies after their landing, may take their ſubmiſſion, oth, and acknowledgement, touching their obedience to the K. Majeſty, and his laws, provided in caſes of Religion: but if it be any other ſubject, who is no Prieſt &c. and yet brought up in any Seminary, they muſt make their ſubmiſſion, and take the Oath, &c. before two Iuſtices, &c. See more in this title.

P. Ieſuits. 4.

27. Eliz. 2. P. Ieſuits. 10. Every Subject knowing any Ieſuite, or Popiſh Prieſt, to be within the Kings Dominions, ought to diſcover the ſame to ſome Iuſtice of Peace, or other higher Officer, within twelve dayes, &c. And ſuch Iuſtice of Peace ought within eight and twentie dayes after ſuch diſcovery made

to

to him, to give information thereof to one of the Kings Privy Councell, &c. upon paine of two hundred marks. And upon ſuch information given by the Iuſtice of Peace, he ſhall have redelivered to him a note in writing ſubſcribed by ſuch privie Councellour, &c. (with his owne hand) teſtifying that ſuch information was made unto him.

If any perſon to whom any *Agnus Dei*, *Croſſe*, *Picture*, *Beads*, or ſuch ſuperſtitious things ſhall be delivered or offered, doe diſcloſe ſuch deliverer or offerer to any Iuſtice of Peace, &c. That Iuſtice of Peace within fourteene dayes, muſt declare the ſame to one of the Kings Privy Councell, or elſe he ſhall incurre the danger of a *Præmunire*. 13. Eliz. 2. P. Rome 6.

If there be any ſubject of this Realme, be he Popiſh Recuſant, (convict, or not convict) or other perſon, that ſhall not repaire every Sunday to ſome Church (both to Morning and Evening Prayers) and then and there to abide orderly during the time of Prayer, Preaching, or other Service of God there uſed, according to the Statute made 1. *Eliz. cap.* 2. Then any one Iuſtice of Peace of that limit where the ſaid partie ſhall dwell, upon proofe to him made of ſuch default (by confeſſion of the partie, or oath of witneſſe) may within one moneth next after ſuch default, call the partie before him, and if he ſhall not prove ſufficient cauſe of his abſence (to the ſatisfaction of the ſaid Iuſtice) the ſaid Iuſtice of Peace may give Warrant under his hand and ſeale, to the Church-wardens, to levie twelve pence for every ſuch default, by diſtreſſe and ſale of the offenders goods, &c. And in default of ſuch diſtreſſe, the ſaid Iuſtice of Peace may commit ſuch offender to priſon, untill payment bee made of the ſaid ſumme ſo forfeited; the ſame to be imployed to the uſe of the poore. Alſo this Statute ſeemeth to extend to women that bee married: ſee *Co.* 11. 61. *b.* See alſo the title, *Riots hic cap.* 88. Co. 11. 63. b. 3. Inſt. 4. P. 50. P. Sacramens. 5.

And ſo note that this penaltie of twelve pence, and of xx. li. a moneth, ſhall be both of them paid by a Recuſant convict. *Co.* 11. *fol.* 63. *b.*

Alſo this repayring to Church every Sunday, muſt be as well to Evening Prayers as to Morning Prayers, for it ought to be an entire day, and an entire Service; and ſo Sir *Richard Hutton*, one of the Iudges of the Court of Common Plees, did deliver it in his charge at Cambridge Lent Aſſiſes, *Anno* 1. *Caroli Regis.* And therewith agreed Sir *Robert Bartlet* at Summer Aſſiſes, *Anno* 9. *Caroli Regis.*

The party that doth firſt diſcover to any Iuſtice of Peace, any Recuſant, or other perſon entertaining or relieving any Ieſuit, Seminary, or Popiſh prieſt, or any Maſſe to have beene ſaid, and any of them that were preſent thereat, within three dayes after the offence (and by reaſon of his diſcovery any of the offenders be taken and convicted) ſhal be freed from danger of the offence, if he be an offender therein, and have the third part of the forfeiture which ſhall be forfeited by ſuch offence, 3. *Iac. cap.* 4. 3. Iac. 5. P. 60.

Before ſome Iuſtice of Peace of the countie, liberty, or limit where the parents of a child ſent beyond ſeas, without licence, did dwell, ſuch child muſt take the oath of allegeance expreſſed, 3. *Iac. c.* 4. And they that were beyond Seas before the making of this act, are to take the ſame oath within ſixe moneths after their returne, before ſome Iuſtice of Peace where ſuch perſons inhabit, before they can take the benefit of any gift, conveyance, P. 70. 71.

veyance, devise, or discent, &c. of any lands or tenements, &c. 3. *Iac. cap.* 5.

P. 62. Popish Recusants indicted or convicted, and all other persons which have not repaired to some usuall Church or Chappell, and there heard divine service, by the space of three moneths last past, dwelling, or which shall dwell in any County within ten miles of the Citie of *London*, shall depart from thence according to this Statute, and deliver up his or her name to the next Iustice of peace in the same County, upon paine of forfeiture of 100. li. 3. *Iac. cap.* 5.

P. 63. Any one of the foure Iustices of peace, which by this Statute may licence a confined Recusant to travell, may minister the oath, to be taken by such Recusant, that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stayes, 3. *Iac. cap.* 5.

3. Iac. 5. P. 75. After any Warrant be granted out from the quarter Sessions, or from any foure Iustices of peace there for the taking away of the armor of any Popish Recusant convict; if any such Recusant having any such armour, gunpowder, or munition; or if any other person having any such armor, to the use of any such Recusant, shall refuse to declare unto the said Iustices of peace, or any of them, what armor he or they have; or shall hinder or disturb the delivery thereof, to any of the said Iustices, or to any other person authorised by their Warrant to take & seise the same, then every such offender shall be imprisoned, by warrant of & from any two Iustices of peace of such County, by the space of three monethes without baile.

3. Iac. 4. P. 43, 44. Any two Iust: of the P. (the one being of the *quorum*) may require any Popish Recusant, man or woman, of the age of 18. yeeres or above, which is convicted or indicted for Recusancie, or which hath not received the Communion twice the yeere past; or which travelleth the Country, and is unknowne (and being examined upon oath, shall confesse, or not deny themselves to be Recusants, or not to have received the Communion twice the yeere past) to take the oath of Allegeance appointed by the Statute, 3. *Iac. cap.* 4. And if such person shall refuse to answer upon oath, such Iustices of peace examining him as aforesaid; or to take the said oath of Allegeance, then the said two Iustices shall commit the same person to the common Gaole, there to remaine without baile, untill the next Assises or quarter Sessions: But Noblemen and Noblewomen are excepted, as not to be dealt withall herein by the Iustice of peace. *Two Iustices.*

3 Iac. 7. Also any two Iustices of peace may take the said oath of Allegeance of such persons as have charge of Castles, Fortresses, Block-houses, or Garrisons, and of all Capteines having charge of souldiers within this Realme: And upon refusall may commit the offender, being of the age of 18. yeeres, to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions, 7. *Iac.* 6.

Also by the same Statute 7. *Iac. cap.* 6. any two Iustices of Peace, the one being of the *quorum*, may require any other person or persons, man or woman, be they Recusants or not, of the age of 18. yeeres or above (under the degree of a Baron or Baroneese) to take the said oath; and may commit them as aforesaid, upon their refusall.

7. Iac. 6. And by the said Stat. if any person whatsoever, of the age of 18. yeeres (under the degree of a Baron) shall stand and be presented, indicted, *One Iustice.*

or

or convicted, for not comming to Church, or receiving the Communion, before the Ordinary, or any other having lawfull power to take such presentment or indictment, or if the Minister, pety constable, & Churchwardens, or any two of them, shall complain to any one Iustice of Peace neere adjoyning, and the said Iustice shall finde cause of suspition, then that Iustice or any one other Iustice of Peace within whose Commission or power such person shall be, upon notice thereof, shall require such person to take the said oath; and if any person shall refuse to take the said oath tendered to him, or her, as aforesaid, then such Iustice or Iustices shall commit such offender to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions.

Two Iustices. The said two Iustices of Peace shall certifie in writing (subscribed with their hands) at the next quarter Sessions, the names and place of aboad, of such persons as have so taken the said oath before them, by force of the Statute, 3. *Iac.* 4. P. 49.

And it seemeth requisite, that the Iustices or Iustice of peace, do make like certificate (at the next Assises or Quarter Sessions) of such persons as have taken the said oath before them, by force of the Statute, 7. *Iac.* 6.

Such persons as have been reconciled to the Pope, if they shall return into the Realme, and thereupon within six dayes next after their returne shall submit themselves to his Majestie and his Lawes, before any two Iustices of Peace, joyntly or severally, of the County where they shall arrive, the said Iustices may take such submission, and withall may take their oath to the Supremacie, and their oath of Allegeance, and the said oaths so taken, the said Iustices shall certifie at the next Quarter Sessions upon paine of 40. li. 3. Iac. 4. P. 49.

Any two Iustices of Peace of the County, where any of his Majesties subjects (not being a Iesuit, or other Popish Priest, &c.) brought up in any Seminary, shall arrive within six moneths next after Proclamation to be made in that behalfe in the City of *London* under the great seale of *England*, may (within two dayes next after such returne) receive his submission to his Majesty and his Lawes, and take his oath to the Supremacy. 27. Eliz. 2. P. Iesuits 4.

The Iustice or Iustices of Peace that shall receive or take any submission, or oath, as aforesaid (by force of the Statute of 27. *El. cap.* 2.) shall certifie the same into the Chancery, within three moneths after such submission, upon paine to forfeit one hundred pounds. 27. *Eliz. cap.* 2. *P. Iesuits* 11.

If any married woman (under the degree of a Baroneſſe) being lawfully convicted as a Popish Recusant, shall not within three moneths after such conviction, repaire to the Church, and receive the communion, &c. Any two Iustices of P. (the one being of the *Quorum*) may commit her to prison, there to remaine without baile, untill she shall conform her selfe, &c. 3. Iac. 5.

Any two Iustices of P. from time to time, may search the houses and lodgings of every Popish Recusant convict, and of every person, whose wife is a popish Recusant convict, for Popish Books & Reliques of Popery; And they may presently deface and burne such Books and Reliques as they shall finde: yet if it be a Relique of any price, the same is to be defaced at the generall Sessions of the Peace, and to be restored to the owner. P. 74.

35. Eliz. 2. p. 31. A convicted Popish Recusant of small abilitie (not having twentie Markes freehold *per annum*, or fortie pounds in goods, nor being a Feme covert) that shall not repaire to his place of usuall dwelling, or place of birth, &c. and there notifie himselfe to the Minister and Constables (according to the Statute of 35. *Eliz.*) Or shall afterwards remove above five miles from the same, if after hee be apprehended, and shall not conforme himselfe within three months, in comming usually to the Church and in making such publique submission, as in the said Statute is appointed, being thereunto required, as hereunder is mentioned: Then any two Justices of Peace may require such offender to abjure the Realme, and may assigne him the time and Haven, &c. And every such offender shall upon his corporall oath, before the said Iustices, abjure this Realme of England, and all other the Kings Dominions, for ever.

The Oath of the abjuration may be taken by the Justices of Peace, of Recusants, in this forme, or to this effect:

You shall sweare that you shall depart out of this Realme of England, and out of all other the Kings Majesties Dominions, and that you shall not returne hither, or come againe into any of his Majesties Dominions, but by the Licence of our said Soveraign Lord the King, or of his heires: so helpe you God. See *Stamf.* 119. *Vide Wilk.* 40.

And such Recusant thereupon shall depart out of this Realme, at such Haven and Port, and within such time as shall in that behalfe be assigned and appointed by the said Iustices of Peace, unlesse hee bee letted and stayed by such lawfull meanes or cause, as the Common Lawes do allow in cases of abjuration for Felonie, &c. 35. *Eliz. cap.* 1.

If any such Recusant shall refuse to make such Abjuration; or after such Abjuration made, shall not goe to such Haven, and within such time as is so appointed him, and from thence depart out of this Realme, according to this Statute, or after such departure, shall returne or come againe into any his Majesties Realmes or Dominions, without his Majesties speciall Licence, in that behalfe first obtained; in every such case the person so offending shall be adjudged a Felon, *ibidem*.

The Iustices of Peace before whom any such Abjuration shall bee made, shall cause the same to be presently entred of record before them, and shall certifie the same at the next generall Gaole deliverie to be holden in the same County. 35. *Eliz. cap.* 2. *P.* 31.

The Bishop of the Dioceese, or any one Iustice of Peace, or the Minister of the Parish where such convicted Popish Recusant of small ability shall be, may require the submission of such Recusant, 35. *Eliz.* 2. *P.* 31.

The forme of such submission, see *ibid. P.* 34.

Recusants confined to five miles, may be licenced by any foure Iustices of Peace, and the Bishop or Lieutenant, or any Deputy Lieutenant residing in the said Countie, under all their hands and seales, to travell about their necessary businesses out of the compasse of five miles. But such Licences must specifie the particular cause of the said Licence, and the time of their absence must therein bee limited, and the party so licenced must first take his Oath before the said foure Iustices, or any of them, that he hath truly informed them of the cause of his journey, and

Foure Iustices.

that hee ſhall not make any cauſeleſſe ſtayes. See the forme of ſuch Licence, *hic poſtea, tit. Preſidents.*

Riots, Routs, &c. CAP. 46.

One Juſtice. ANy one Iuſtice of Peace alone, may uſe all good meanes to prevent a Riot or Rout before it be done; and for to ſtay it whileſt it is in doing, and in the doing may take and impriſon the Riotors, or binde them to their good behaviour: but being once done, and committed, one Iuſtice of Peace cannot make enquirie thereof, nor aſſeſſe any fine, nor award any Proceſſe, nor otherwiſe meddle to puniſh it in the nature of a Riot or Rout, but onely as a Treſpaſſe againſt the Peace, or upon the Statutes of North-hampton, or of Forcible Entries: whereof ſee the title *Forcible Entrie.* Lamb.18. 34.H.3.1. P.Iuſt.18. Crompt.43. 14.H.7.14. Br. Peace.

And yet if one Iuſtice of Peace, ſitting in a judiciall place (as in the Seſſions) ſhall ſee a Riot, hee may command them to bee arreſted, and may make a Record thereof, and the offenders ſhall be concluded thereby: but if one Iuſtice of Peace ſhall ſee a Riot in another place, and ſhall command them to be arreſted, and ſhall make a Record therof, the offenders ſhall not be concluded thereby, but may traverſe it: And yet the Iuſtice may record it, and certifie the ſame to the next Seſſions, &c. *Cro.* 41. Crompt.43.

If a Iuſtice of Peace will commit a man to ward, pretending untruly, that hee did a Riot, where he did none, the party may have an action of Treſpaſſe againſt him, *Fitz. Iuſt. 9. tamen vide Co. 8. fol. 121. a.* that the Record of a force made by a Iuſtice of Peace is not Traverſeable, for that hee doth it as a Iudge: And ſo the Iuſtices Record of a Riot, is not traverſeable. See *hic poſtea.* Alſo ſee *Br. Iudges 2. & 10.* That an Action will not lie againſt a Iuſtice or Judge of Record. *& 2. R. 3. 10. hic cap. 120. ſc. pro re facta judicialiter.* Ibid.

One Juſtice. Every Iuſtice of Peace (being of and in the Countie, and having notice of any Riot, Rout, or unlawfull Aſſembly) ought to have a care of the execution of the Statute made 13. *H.* 4. *c.* 7. (*viz.* that the Riotors, &c. be arreſted, and removed,) for if that Statute bee not executed in every part thereof, by ſome of the Iuſtices, the two next Iuſtices of Peace ſhall forfeit each of them 100. li. and every other Iuſtice of Peace within that Countie, in whom there ſhall be any default, ſhall be finable in the Star-Chamber. Dyer 210. Lamb.311. 13.H. P.2. Dyer

And therefore every Iuſtice of Peace of the Countie, hearing of any Rout, or of any intention of a Riot (without making any precept, or tarrying for his fellow Iuſtice, or for the Sheriffe) ſhall doe well to goe himſelfe (if hee bee able) with his ſervants, or other power of the Countie, if need bee, to the place where ſuch perſons be ſo aſſembled, and to ſuppreſſe them, and all ſuch as hee ſhall finde and ſee riotouſly aſſembled (and armed) to arreſt them, and to force them to put in ſurety for the Peace, or for their good behaviour; and for refuſing to give ſuch ſuretie, or in default of ſuretie, to impriſon them; and alſo hee may take away their weapons and armour, and ſeiſe and priſe them for 14.H.5. Lamb.18. Br. Peace Lamb.79. 80.

for the King. *Vide tit. Armour*, and *Forcible Entrie.*

So that one Iuſtice of Peace ſeeing a Riot, may and ought to record it, and to attach the Riotters, and to commit them, or binde them over to the good behaviour; But he may proceed no further therein. For he cannot fine them without an enquirie, which enquirie muſt be by a Iurie, and before two Iuſtices of Peace; And may be at any time within the moneth. Otherwiſe for omitting of attaching or arreſting the offenders at the firſt, the Iuſtice which ſaw the Riot is puniſhable: But the enquirie by a Iurie muſt be within one moneth, *ſub pœna* 100. li. to the two next Iuſtices, &c. See *hic poſtea.*

14.H.7.16 Br. Peace 7. And if the Iuſtice of Peace (being come to the place) ſhall not finde the Riotters yet come thither, he may leave his ſervants there (with his Warrant in writing, or without Warrant, as it ſeemeth) to reſtraine them in their ſaid enterpriſe, or elſe to arreſt ſuch offenders, when they ſhall come, if they ſhall offer to commit any Riot, or to break the Peace; and this for ſpeedy remedy.

So if the Iuſtice be ſicke, and ſhall heare of a Riot, hee may ſend his ſervants, or other power of the Countie, if need be, (with his Warrant under his hand and ſeale, or without ſuch Warrant, by word of mouth) to the place to repreſſe it, or to arreſt ſuch offenders) and to bring them 14.H.7.10. Br. Peace 7. before him, to find ſureties for the Peace: and all this he may doe without expecting the comming of any his fellow Iuſtices, or of the Sheriffe, or under-Sheriffe, and this alſo for expedition.

P.16.17. Alſo one Iuſtice of Peace, by the Statutes made 1. *Mar. cap.* 12. and 1. *El.* 16. might have made Proclamation in the Kings name, That all perſons riotouſly aſſembled, ſhould depart to their habitations, &c. The forme of which Proclamation you may ſee in the ſame Statute, and in P. Riots, 17. But the ſaid Statutes are now expired.

Alſo any one Iuſtice of Peace (by the firſt *Aſſignavimus* in the Commiſſion) may cauſe to be kept and put in execution, all other Statutes made for the repreſſing of Riots, force, and violence: but therein hee muſt deale onely according to the forme and order in ſuch Statutes preſcribed.

13.H.4.c.7. P.2.5. But the ordinary power of puniſhing of Riots belongeth unto two Iuſtices of Peace at leaſt: and therefore the two next Iuſtices of Peace which dwell neereſt in the Countie, where any Riot, Aſſembly, or Rout of people ſhall be againſt the Law, together with the Sheriffe of under-Sheriffe of the Countie, upon complaint or other notice of the Riot, ſhall doe execution of the Statute 13. *H.* 4. 7. *Iſſ.* of all and every part thereof reſpectively, as to them is appointed) every one of them, upon paine of 100. li. And in default of the two next Iuſtices, the other Iuſtices of Peace of and within the Countie (upon notice of ſuch Riot) ought to doe execution thereof, every one upon danger to be fined in the Star-Chamber: but the penaltie of 100. li. is onely to be laid upon the two next Iuſtices. *Two Iuſtices.*

Dyer 210.

Crompt. 63. Lamb. 322.

See the Caſe of *Drayton Baſſet, hic antea, tit. Forcible Entrie*: where certaine Iuſtices of Peace which were not the next, nor did not dwell neereſt to the place where the Riot was committed, and yet were fined

in the Star-Chamber, upon the ſtat. of 17. *R.* 2. *cap.* 8. But that Riot was notorious, for there were a great number aſſembled in the Manor-houſe of *Drayton Baſſet*, who did detaine the ſame forcibly.

And therefore if the Riot &c. be great and notorious, whereof by common intendment every perſon may take knowledge, it is not ſafe for the Iuſtice or Sheriffe, &c. to expect and ſtay till complaint thereof ſhall be made unto them, or that they ſhall have information or notice given them thereof, leſt they incurre thereby the ſaid penaltie of 100. li. Dyer 220.

If any one other of the Iuſtices of the Peace of the Countie (beſides thoſe two which are next) ſhall execute this ſtatute, that ſhall excuſe the two next Iuſtices, for that the ſtat. giveth power herein to all Iuſtices. P. R. 30.

If one, or the two next Iuſtices ſhall come, and not the Sheriffe, or under-Sheriffe, ſuch Iuſtices as doe come, ſhall be excuſed of the forfeiture of 100. li. but though the ſaid Iuſtices ſhall be excuſed of the ſaid forfeiture; yet if there commeth but one Iuſtice of Peace, he ought to arreſt the Riottors, and to remove the force, and commit or bind over the Riottors, otherwiſe he is finable, &c.

And if there ſhall be two Iuſtices preſent, and neither the Sheriffe nor under-Sheriffe; yet thoſe two Iuſtices are finable, if they ſhall not doe all that, which (without the Sheriffe or under-Sheriffe) they are authorized to doe by the ſaid ſtatute. Lamb. 311.

But no Iuſtice of Peace that dwelleth in another Countie is bound (upon the ſaid penaltie of 100. li.) to execute the ſaid ſtat. of 13. *H.* 4. although he dwelleth next to the place where the Riot is, and although he be in Commiſſion of the Peace for the Countie where the Riot is, as it ſeemeth: for the words of the ſtatute are, The Iuſtices which dwell neereſt in every Countie where ſuch Riot ſhall be, and not which dwell neereſt to the place where the Riot ſhall be; and yet it ſeemeth ſafe that ſuch Iuſtice dwelling out of the Countie, upon notice of ſuch Riot, doe come into the Countie, and doe his endevour to ſuppreſſe the ſame Riot, and to execute the Statute, for that he is one of the Iuſtices of the Countie. Lamb. 311. P. 5.

If the Sheriffe or under-Sheriffe doe not come, the Iuſtices ought to ſend for them, as M. *Marrow* thinketh.

And ſome ſeeme to be of opinion, That if the Sheriffe or under-Sheriffe ſhall not come to the Iuſtices, being ſent for to aſſiſt them, that then all the Iuſtices of Peace dwelling neere, or remote, ſhall be excuſed of the ſame penaltie of 100. li. or of any other penaltie or fine; for that the ſaid Statute doth give the Sheriffe or under-Sheriffe equall authoritie, and as it were joyne him in commiſſion in the copulative with the Iuſtices of Peace. But others ſeeme to be of another opinion, *viz.* That if the Sheriffe or under-Sheriffe ſhall not come, yet the Iuſtices of Peace ſhall be fined if they come not, and arreſt the Riottors, and doe not moreover proceed to doe therein all that which (without the Sheriffe or under-Sheriffe) they are in any wayes authorized to performe. P. R. 30. Lamb. 311. Cropp. 61.

Now what the Iuſtices of Peace may or ought to doe therein (by force of this Stat. of 13. *H.* 4. 7.) without, or in the abſence of the Sheriffe

riffe and under-Sheriffe, is worthy conſideration, as being needefull for the Iuſtices of Peace to know, and ſafe for them to performe, as well for the ſpeedy preventing of ſuch preſent miſchiefes as may happen to the Common-wealth by ſuch dangerous aſſemblies, as alſo for their ſaving of the penaltie of the Law otherwiſe like to lie upon them.

Lamb. 313. 332. But herein I dare not determine, finding that others (of good judgement and experience) that have written hereof, have both ſeemed to doubt herein, and have written ſparingly thereof.

And yet there is no doubt, but that the Iuſtices of Peace (without the Sheriffe or under-Sheriffe) upon all Riots, may and ought firſt to goe to the place, and ſuch Riotors as they ſhall ſee or finde riotouſly aſſembled, they may and ought to arreſt them, and to take away their Armour and weapons, and to remove and commit the Riotors, or may cauſe them to finde ſureties for the Peace, or good behaviour, and for want of ſuch ſureties may commit them to the Goale; all which any one Iuſtice of Peace may doe.

8 Riot 2. Cromp. 67. b. Alſo two Iuſtices of Peace (after the Riot committed) without the Sheriffe or under-Sheriffe) may and ought to enquire of the Riot, and if upon ſuch inquirie the Riot bee found, the ſaid Iuſtices may fine and impriſon the offenders, as hereafter appeareth.

But whether two Iuſtices of Peace ſeeing a Riot, may record the ſame upon their owne view, without the Sheriffe or under-Sheriffe, and thereupon (without any enquirie) may fine them for the ſame, and may commit them to priſon till they have paid the ſame fine, is to be conſidered. I know the common opinion to bee, that they cannot record the Riot (without the Sheriffe, or under-Sheriffe) for, ſay they by the Statute, the Sheriffe or under-Sheriffe are aſſociated to the Iuſtices of Peace, and have equall authoritie with them therein; and then conſequently the Iuſtices of Peace alone upon their owne view, without enquirie, can neither fine them, nor impriſon them for their fine.

14. H. 7. b. Yet *Fineux* chiefe Iuſtice ſaith, that * this Statute of 13. *H.* 4. was made for the common profit of the realme, and for a haſtie remedy, and to avoyde a preſent miſchiefe like to happen, and therefore ſhall be conſtrued largely for the common good, and in furtherance and advancement of expedition of Iuſtice.

* M. Lambert thinketh it to bee the Stat. of 34. E. 3. 1. that *Fineux* meant rather then the Stat. of 13. H. 4.

See Co. 10. 103. b. ſuch a matter.

11. H. 4. f. 7. Alſo we ſee that any one Iuſtice of Peace may doe all theſe things in caſe of a forcible Entrie, *ſc.* Any one Iuſtice of Peace may come with the power of the Countie, if need be, and may arreſt the offenders, and may record the force by him viewed: and this record ſhall be a ſufficient conviction, ſo that hee may thereupon commit the offenders to the Goale, and may fine them.

P. 1. Alſo this Statute of 13. *H.* 4. doth relate to the ſaid Statute of Forcible Entries 8. *H.* 6. touching the conviction of offenders by the record of the Iuſtices.

Fitz. Iuſt. 9. 17. 14. H. 7. 8. Cromp. 65. 396. Alſo if two Iuſtices of Peace (without the Sheriffe) ſhall ſee a Riot, they may arreſt them, and make a record thereof, and the offenders ſhall be concluded by ſuch record, for that the view of the Riot is not to bee traverſed. *Lambt.* 313.

Alſo the Statute 34. *E.* 3.1. ſeemeth to enable two Iuſtices of Peace, to impriſon and fine Riotors, and that without enquirie, and then conſequently, it ſeemeth they are to make a record of the Riot. P.Inſt.12.

And yet *quare* whether two Iuſtices of Peace (upon the Statute of 13. *H.*4.7.) without the Sheriffe, may upon their view of a Riot, record the Riot, and without enquirie fine the offenders, and impriſon them till they have paid their fine as convict by their view and record, though this may ſeeme to bee more for the Kings advantage, rather then to hazard the fine upon the finding it by enquiry. But it rather ſeemeth, that the Iuſtices upon their owne view of a Riot, may Record it, and commit the offenders, and then to certifie, or ſend the Record into the Kings Bench, where the offenders ſhall be fined: And this I take to bee more warrantable, and ſafer for the Iuſtices, if they ſhall not enquire thereof.

Two Iuſtices. And now to the particulars of that which the two next Iuſtices of Peace, with the Sheriffe or under-Sheriffe, muſt doe in execution of this Statute of 13.*H.*4.7. every one upon paine of 100.li.

1. Firſt, they ſhall goe to the place in perſon, if they bee able, where the Riot, &c. ſhall be. 13.H.4.7. P.1.2.

Poſſe Comitatus. And they ſhall take the power of the Countie (if need bee) *ſc.* they ſhall have the aide of all Knights, and other temporall perſons under that degree, that be above the age of xv. yeeres, and bee able to travell: for all the Kings ſubjects that are in the Countie where a Riot, &c. ſhall be, being able to travell, muſt bee aiding and aſſiſtant to the Iuſtices of Peace, Sheriffe, or under-Sheriffe, or other Commiſſioners, when they ſhall be reaſonably warned, to ride or goe with the ſaid Iuſtices, and the Sheriffe, &c. in aide to reſiſt ſuch riots, &c. upon paine of impriſonment, and to make fine and ranſome to the King; which ranſome ſhall bee treble ſo much at the leaſt as the fine, *Dyer* 232. Yet by others, by ranſome, is intended that the partie is to make his agreement with the King, *ad verum valorem omnium bonorum ſuorum mobilium.* 2.H.5.8. P.12.

But Sir *Edw. Coke L.*12.27. ſaith, that in legall underſtanding, a fine and ranſome are all one.

And it is referred to the diſcretion of theſe Iuſtices, how many or few they will have to attend them in theſe buſineſſes, and in what ſort they ſhall be armed, weaponed, or otherwiſe furniſhed for it. Lamb.309. Cromp.64.

Againe, it is not good for the Iuſtices to aſſemble the power of the County, without certaine information, or knowledge of ſuch riotous aſſembly: yet if upon falſe information of a riot, to be at ſuch a place, the Iuſtices ſhall cauſe the power of the County to be aſſembled, the Iuſtices ſhall be excuſed by reaſon of the information; and if without information, the Iuſtices ſhall thinke that ſuch a riotous aſſembly is made in ſuch a place, and ſhall aſſemble the power of the County to goe thither to arreſt the Riotours, and when they come to the place, they finde a Riot there indeed, they muſt arreſt and impriſon the offenders; and ſhall bee excuſed of the aſſembly made by them: but if they ſhall finde no Riot there, then they ſhall bee puniſhed for making ſuch an aſſembly of their owne heads, without information. Lamb.310. Cromp.64.

Arreſt. 2. All ſuch offenders as they ſhall find there preſent, they ſhall arreſt them

them, or cauſe them to be arreſted, and ſhall remove the force, *ſo.* ſhall commit to priſon all the Riotors, and take away their weapons.

Alſo it ſeemeth that all ſuch as came in the company with ſuch Riotors, or in the company of any of them, if that the Iuſtices ſhall finde them there preſent (though they doe nothing, and though they came without any intent of their parts to commit any Riot, yet) they ſhall bee arreſted, impriſoned, and fined. See to this purpoſe in the title *Forcible Entrie, cap. 77.*

Mar. 1. ca. 8. Cromp. 63. Alſo all ſuch riotors, as the Iuſtices ſhall meet in their way (riotouſly arrayed, and comming from the place) they may arreſt and impriſon them, for that they found them unlawfully aſſembled: but they cannot record any riot by them done, for that they ſaw it not, yet they muſt afterward (as it ſeemeth) inquire thereof by a Iurie, that ſo the offenders may be fined, &c. See more in this title.

But if the Iuſtices doe come and ſee the riot committed, and after the ſaid riotors ſhall eſcape from the Iuſtices at that time, yet the ſaid Iuſtices ſhall record it; but they cannot arreſt them at any other time, except it be preſently after and in freſh ſuit; neither can they fine the offenders, nor award any proceſſe againſt them upon that record which they ſhall make: and yet for that they ſaw the riot (and theſe riotors that bee eſcaped, committing the riot) they ſhall record it. But that record ſhall Lamb. 320. not bee kept amongſt the records of the Peace, but the ſaid Iuſtices ſhall ſend the ſaid record into the Kings Bench, that Proceſſe may from thence be made upon it, againſt thoſe riotors that bee eſcaped; where alſo the ſaid offenders ſhall not be admitted to any Traverſe, but muſt of neceſſitie make fine for their ſaid offence.

If after the Iuſtices and Sheriffe ſhall ſee the riot, the ſaid riotors ſhall eſcape, and the Iuſtices and Sheriffe ſhall record the ſame riot, and then one of the Iuſtices be put out of the Commiſſion, or the Sheriffe, or one of the Iuſtices ſhall happen to die, yet ſhall that record be ſent, or certified into the Kings Bench, by the other Iuſtice and Sheriffe. *Lamb.* 320.

But if (after the enquiry, and before the Certificate, the Sheriffe or) the Iuſtices ſhall die, or be put out of the Commiſſion, or that their authoritie doth ceaſe by the death of the King, or otherwiſe, ſuch record cannot bee certified without the Kings Writ of *Certiorari. Br. Record.* 17. 64. & *Lamb.* 320.

13 H. 7. Cromp. 196. Alſo ſuch offenders, as the Iuſtices ſaw committing the riot, though they ſhall eſcape from the Iuſtices, yet the ſaid Iuſtices may after grant out their Warrants for them, and ſend them to the Goale, till they ſhall finde Suretie for their good behaviour.

If ſuch offenders ſhall be departed before the comming of the Iuſtices, yet upon certaine information of their being there, the ſaid Iuſtices may 34. H. 34. 1. P. 18. alſo grant out their Warrants for them, and may commit them, till they have found ſureties for their good behaviour: Or rather the Iuſtices ſhall doe well to proceed againſt them, by enquirie, and ſo to fine the offenders for the King, &c. See more in this title.

Lamb. 310. Cromp. 62. 158. Alſo in the execution of this arreſt of the riotors, the ſaid Iuſtices, &c. may juſtifie the beating, wounding, or killing of any the riotors that

that ſhall reſiſt them, or that will not yeelde themſelves to them. *Vide tit. Homicide, bis.*

Alſo the ſaid Iuſtices may take from ſuch Riotors, their Armor, Harneſſe, and weapons, and ſhall cauſe the ſame to be priſed, and to bee anſwered to the King, as forfeited.

Record. 3. After the arreſt made, the ſaid Iuſtices, and Sheriffe, or under-Sheriffe, ſhall make a record in writing, of the ſaid riot, (*ſc.* of all that which they ſhall ſee, and finde done in their preſence againſt the Law) without any other enquirie: And that their record is a ſufficient conviction of the Offenders. 13. H. 4. 9. P. 1.

If two Iuſtices of Peace ſhall ſee any making of a Riot, they may command others to arreſt the Riotors, and then make their Record thereof, and the offenders ſhall be concluded thereby. *Fitz. Iuſt. of Peace, fol.* 17.

But if the Iuſtices of Peace doe not themſelves ſee the Riot, they cannot make a Record thereof; but then they muſt enquire thereof.

If the Iuſtices of Peace, &c. going to ſee a riot, another Riot ſhall happen in their preſence; they may record this, and arreſt and impriſon the offenders.

So if the Riotors ſhall make a Riot upon the Iuſtices (and Sheriffe) that doe come to arreſt them for their former Riot, they may record that alſo.

So if two Iuſtices of Peace (and the Sheriffe, or under-Sheriffe) ſhall meete for any other cauſe of ſervice, or for any private buſineſſe (as upon an arbitrement, or other like matter) and a Riot ſhall happen to be done upon themſelves, or in their ſight, they may record it, and may arreſt, and impriſon the offenders.

And if the Iuſtices of Peace ſhall record a Riot, and upon examination of the matter after, it ſhall appeare to be no Riot; or that they ſaw it not, or that there was no Riot at all; yet the parties ſhall bee concluded thereby, and have no remedy (as it ſeemeth;) and therefore the Iuſtices ſhall doe well to bee adviſed what they record. See 9. *H.* 6. *fol.* 60. *Br. Iudges* 2. *Fitz. Iuſt. of P. fol.* 17. 9. H. 6. fol. 60. Cromp. 63. 65.

And againe, for that this Record of the Iuſtices and Sheriffe, is a ſufficient conviction in it ſelfe againſt the offenders, therefore it ought to be formall and certaine, as well for the time and place, as alſo for the number, weapons, manner, and other circumſtances, becauſe the parties bee concluded thereby, and ſhall not be received to traverſe or deny it in any point. Lamb. 311.

The forme of the Record, *vide hic cap.* 130.

This Record ought to remaine with one of the ſaid Iuſtices of Peace; and ſhall not bee left amongſt the Records of the Seſſions of the Peace, it being made out of the Seſſions, and not appointed to bee certified thither. Lamb 313. & 365. 375.

Impriſon. 4. Alſo the ſaid Iuſtices of Peace (and none other Iuſtice of Peace) ſhall commit ſuch offenders to the Gaole, there to remaine convict by their view, teſtimony, and record (as in caſe of Forcible Entrie) untill they have paid a fine unto the King. P. 1. 12. Lamb. 313.

Alſo

Co. 8. 120. Alſo ſuch commitment of the offenders to the Gaole ought to be done preſently.

Lamb. 310. And the power of the Counte ought to be ayding to the Sheriffe, or under-Sheriffe, for the conveighing of them to the Gaole.

Cromp. 61. If the Iuſtices of Peace, and Sheriffe, or under-Sheriffe, ſhall record the Riot, and ſhall not preſently commit the Riotors to priſon: or if they ſhall commit them to priſon, and ſhall not record the Riot, they ſhall forfeit every of them 100 li. by the ſtat. 13 H. 4. for that they have not done execution of the ſame Statute: for by the ſtatutes they ſhall record and commit, and againe, by the ſame ſtatutes the offenders muſt be as well impriſoned, as fined.

P. Forct 2. P. Riots 1.

Fine. 5 Alſo the ſaid Iuſtices of Peace (and none other) ſhall aſſeſſe the fines upon the ſaid offenders; for they have beſt knowledge of the matter, &c. Co. 8. 41. a. which fines by the ſtatute 2 H. 5. 8. ought to be of good value, that out thereof the charges of the ſaid Iuſtices and other Officers may be borne, ſc. their charges in going, tarrying, and returning, &c. about the ſuppreſſing and enquirie of ſuch Riots; of which charges payment ſhall be made by the Sheriffe, by indenture thereof made between him and the ſaid Iuſtices.

Lamb. 312. 317. Cromp. 161. P. 10.

And yet ſuch fines muſt be reaſonable and juſt, and *ſecundum quantitatem & qualitatem delicti*, and not unreaſonable and exceſſive (for *exceſſus in re qualibet jure reprobatur communi. Co. 11. 14.*) and ſo it is commanded by the Statutes 9 H. 5. 14. 3 H. 1. 6. 18 E. 3. 2. & 34 E. 3. 1. P. Iuſt. 1. & 18.

And the reaſonableneſſe of the fine ſhall be adjudged by the diſcretion of the ſame Iuſtices of Peace. Co. 2. 36. b.

Note alſo, that the fine aſſeſſed in this and ſuch like caſes, muſt not be impoſed upon all the offenders joyndly, but muſt be aſſeſſed upon every offender ſeverally. Co. 11. 43, 44.

And yet note, that in ſome caſes a fine or an amerciament ſhall be impoſed upon divers joyndly; (ſc. ſometimes upon a whole Countie, ſometimes upon a Hundred, and ſometimes upon a Towne, as for an eſcape of a murderer, &c. whereof ſee *hit poſtea*) but that is by reaſon of the incertaintie of the perſons, and for the infiniteneſſe of their number. Co. 11. 43.

And the ſaid Iuſtices ſhall cauſe the ſaid fines to be eſtreated into the Eſchequer, that ſo the ſaid fines may be levied to the Kings Majeſties uſe; and then they are to deliver the offenders againe, as it ſeemeth: Or elſe the ſaid Iuſtices may record ſuch Riot by them viewed, and commit the offenders, and after certifie the record to the Aſſiſes or Seſſions, or into the Kings bench, as in caſe of a Forcible Entrie.

Enquirie. 6 But if the Riot was not committed in the preſence of the ſaid Iuſtices of Peace; or that the offenders be departed before the comming of the ſaid Iuſtices, and Sheriffe, or under-Sheriffe, then the ſaid Iuſtices, or two of them at the leaſt, within one month, immediately after ſuch Riot, Aſſembly, or Rout, ſhall enquire thereof, by the oaths of a ſufficient Iurie (to be returned by the Sheriffe:) and the ſame Riot, &c. being found by ſuch inquiſition, the ſaid Iuſtices muſt make a Record in writing, of ſuch their enquirie and preſentment found before them,

13 H. 4. 7. P. 2.

which

which record also is to remaine with one of the said Iustices: *P. R.* 29. See the forme thereof, *hic cap.* 130.

The forme of a precept to be made by the Iustices, to the Sheriffe, to returne a Iurie, &c. See *his postea, cap.* 130.

The forme of such enquirie or presentment, See also the title *Presidents, hic postea, cap.* 130.

This enquirie shall not be, but where the Riottors are gone before the comming of the Iustices: or where they had not the view of the Riot. Cromp. 61.

It is not necessarie that one of the Iustices of Peace (which shall make enquirie of a Riot) be of the *Quorum*.

Although the words of the Statute are, the same Iustices (*&c.* which came to see the Riot) shall enquire, yet if any other two Iustices of Peace of that Countie shall doe it, that will suffice. Lamb. 316

Also the Iustices of Peace, although they goe not to see the Riot, yet they may enquire thereof within the moneth after.

Neither is it of such necessity, so haue the enquirie within the month, that for default thereof the presentment shall be voyd, for the Iustices of Peace may enquire thereof at any time by force of their Commission: but if it be not within the moneth, then every of the two next Iustices are in danger to lose 100. li. for it. And yet if these Iustices doe charge the Iurie within the moneth, and doe give day unto them for to yeeld their verdict and presentment after the moneth, the Statute is not offended. Lamb. 315

But yet (it seemeth that) the Iustices of Peace are not bound upon the penaltie of 100. li. to enquire within the moneth, of all petite Riots, but onely of such Riots as are notorious and dangerous, and in the nature of Insurrections, or Rebellions.

At this enquirie, the Sheriffe or under-Sheriffe ought to be present with the Iustices of Peace, but the Sheriffe or under-Sheriffe be now as Ministers onely for the returning of the Iurie (for this enquirie,) and be not herein associated with the Iustices, as they were before in arresting the Riottors, and recording their disorder, and therefore they are now to be spared from being Iudges therein: howbeit, by this their presence they may helpe to espie the evill, and besides, it addeth force and credit to the Certificate. Lamb. 316. 318.

If the Iustices doe assemble themselves, the Sheriffe and the Iurie, to make enquirie of a Riot within the moneth, and the parties been agreed amongst themselves, so as none will sollicite the enquirie, nor give in evidence for the King upon that Riot, yet ought the Iustices to proceed (*ex officio*) to make enquirie of that Riot, seeing it may be that some of the Iurie may have knowledge of the Riot. Lamb. 317. Cromp. 61. P. 29.

And also the Iustices ought to make Proclamation, that if any man will give evidence for the King concerning that Riot, or (generally) will informe the Kings Iustices of any Riots, Routs, &c. And thereupon some other persons may perhaps come forth to informe them therein.

But if (at the parties request) the Iustices shall dismisse the Iury without enquirie, they are finable in the Star-Chamber to the King for the same. P. R. 29. Cromp. 61.

And

And if the Iuſtices ſhall not proceed herein *(ex officio)* without ſome will give in evidence for the King, *quære*, if they ſhall not bee hereby in danger to loſe the hundreth pound upon this Statute, for the reaſons above ſaid.

And it ſeemeth that the Iuſtices of Peace may juſtly binde to their good behaviour, the parties that firſt complained to them of this Riot, and have cauſed them to meet, and now will not proſecute the ſame for the King, but have agreed it.

13.H.4.c.7. Pa. Lamb. 317. After ſuch enquirie had, and the truth of the Riot found, the ſaid Iuſtices have authoritie (by the ſaid Statute) to heare and determine the ſame according to the Law, *viz.* they may make out their Warrant, or Proceſſe, *(ſc.* a *Venire facias, hic cap.* 132.) againſt the offenders under their owne *Teſte* (thereby to cauſe the offenders to come in and anſwere,) and upon the appearance of the ſaid offenders, the ſaid Iuſtices may aſſeſſe their fine, and may commit them to priſon till they have paid their ſaid fine, and may deliver them after payment of the ſame fine, or upon ſureties taken for it (which ſureties ought to bee bound by Recognizance:) or otherwiſe they may receive their Traverſe, and thereupon (if the matter will ſo ſerve) to diſcharge and diſmiſſe them: But then the ſaid Iuſtices ſhall doe well to ſend ſuch indictment or inquiſition found (and ſuch Traverſe) to the next Quarter Seſſions, or into the Kings Bench, and there the Traverſe ſhall bee tried and determined according to Law. *P.R.* 30. *Hear and determine.*

2. Inſt. 200. Lamb. 317.

Note that all indictments, inquiſitions, or preſentments, taken and found before Iuſtices of Peace, of any Riot, Forcible Entrie, or other thing againſt the Peace, may bee delivered into the Kings Bench, by the hands of the ſame Iuſtices of Peace, before whom the ſame was found; or otherwiſe may bee removed from the ſaid Iuſtices of Peace, before the Juſtices of the Kings Bench, by a *Certiorari*; in both which caſes, the Iuſtices of the Kings Bench may proceed to heare and determine the ſame.

Now by the Statute made 2. *H.* 5. *cap.* 8. the King is to beare the charges of the Iuſtices of Peace, which ſhall execute the Statute of Riots. And therefore,

Concerning the fine ſo aſſeſſed by the Iuſtices of Peace, the Iuſtices of Peace may thereout (as it ſeemeth) pay the charges of the ſaid Iuſtices, and of the Iurie (which made the inquirie, and by whom the Riot was found) *ſc.* for their dyet, and the Sheriffes fees, &c. And then they may bring the Record of this enquirie to the next Quarter Seſſions of the Peace, and there deliver the ſame Record to the Clerke of the Peace, together with the reſidue of the money remaining of the fine, &c.

Alſo the Clerke of the Iuſtice which maketh up the Record of this inquirie, may have his fees out of that money: or elſe hee may take of every offender xii.d. when they have paid their fine; for ſo the Clerks of the Peace uſe to doe.

Or rather the ſaid Iuſtices are to be paid their charges (in going, and continuing, in doing, and executing the ſaid office) by the Sheriffe, by Indentures

Indentures made betweene the Sheriffe and the ſaid Iuſtices; whereof the Sheriffe upon his accompt in the Exchequer may have due allowance. 2. *H.* 5. *cap.* 8.

But when men are indicted of Riots (or the like) they will uſually yeeld themſelves, and pray to bee admitted to their fine (in which caſe the Iuſtices of Peace commonly doe aſſeſſe but ſome ſmall ſumme, or fine, and upon the payment thereof doe diſcharge the offender:) and hereby the offenders are not impriſoned, (which would worke more feare in ſuch offenders, than ſuch fine) and therefore it is behovefull for the Iuſtices of Peace to uſe good care and diſcretion herein, for by the Statute 2. *H.* 5. *cap.* 8. the offenders are as well to bee impriſoned, as fined; and it ſeemeth much more ſerviceable, and more agreeing with the intent of the Law. Beſides, this fine called by *divers old Statutes, Ranſome, (or *Redemptio* in Latine) ſeemeth by the property of this word to imply, That the offenders ought firſt to bee impriſoned, and then to bee ranſomed, and delivered in conſideration of this fine. Lamb. 552. *Marlb. ca. 2, 3, 4. Lamb. 556.

And theſe fines the Iuſtices of Peace are now willed by the Statute (2. *H.* 5. *cap.* 8.) to put in greater ſummes than they were wont to bee put in ſuch caſes, for the bearing of the charges of the Iuſtices and other Officers, &c. as is before ſaid.

At the Common Law, a Riot was puniſhable as a Treſpaſſe, and as well the fine, as the impriſonment were at the diſcretion of the Iudges: and in the ſame manner the Statute of 13. *H.* 4. enableth the Iuſtices of Peace to puniſh ſuch offenders. But now as well the impriſonment, as the fine of ſuch offenders are to be encreaſed by the ſaid Statute 2. *H.* 5. *cap.* 8.

And therefore where the Iuſtices of Peace are remiſſe herein (*ſc.* in not ſufficiently puniſhing ſuch offenders by due fine and impriſonment) the Lords in the Star-Chamber, may (and doe often) aſſeſſe upon Riotors for the ſame Riot (for which the Iuſtices of Peace have formerly aſſeſſed a fine in the Countrey) a greater penalty, if they ſee cauſe; and yet in this caſe the offenders bee not twice puniſhed for one offence, but that part of the due puniſhment is inflicted at one time, and part at another. Cromb. 63. P.R. 24.

Certificat. So laſtly, if the truth or Riot cannot be found by the Iuſtices of Peace upon ſuch inquirie (being hindred by the perverſeneſſe of the Iurors, or by the unlawfull maintenance, countenance, or embracery of other perſons that put themſelves into the cauſe) then within one moneth next after the inquirie, the ſame Iuſtices or Sheriffe or under-Sheriffe, ſhall certifie before the King and his Councell (*ſc.* into the Star-Chamber, or to the Bodie and Board of the Privy Councell, or into the Kings *Bench *Cromp. 63.*) ſo much of the fact and circumſtances thereof, as may by any wayes or meanes appeare unto them, with the certainty of the names of the principall offenders, upon paine of one hundred pound to every of the ſaid Iuſtices, Sheriffe, or under-Sheriffe: and alſo the ſaid Iuſtices, with the Sheriffe, or under-Sheriffe, ought in the ſame Certificate, to certifie the names of ſuch maintainers and embracers, with their miſdemeanours; and of the time, place, and other circumſtances, and 13. H. 4. 7. 19. H. 7. 13. P. 3. 15. Lamb. 318. Lamb. 319. * Br. Premunir. 2.

and the impediments, why the truth of the Riot, &c. is not found, upon
P.15. paine of forfeiture of twenty pound a piece, to every of the Iuſtices and Sheriffe. *Cromp. 63. b. & 199. b.* The forme of ſuch Certificate, See *hic cap.* 130.

The end of this Certificate is but onely to put and force the offenders to anſwere thereto, before the King and his Councell: and though
P.3. Lamb. 318. the words of the Statute doe make this Certificate to bee of the force of a preſentment of twelve men againſt the offenders. Yet ſuch Certificate is no conviction, but that the offenders may * traverſe it, by the words of the ſame Statute. And ſo this Certificate is onely of the nature of a Declaration, or indictment at the Common Law, and therefore it ought to comprehend the certainty of the time, place, perſons, and other materiall circumſtances.

* But ſuch Traverſe and Certificate ſhall be ſent into the Kings Bench and there be tried.

If this Certificate be not made within one moneth after the inquiſie, then it is not according to the Statute, and ſo not good to force the offenders to anſwer.

If two Iuſtices of Peace, and the Sheriffe, ſhall goe to ſee a riot, yet any other two Iuſtices of the County may make the inquirie, and then they altogether, or the firſt two, or the laſt two (with the Sheriffe or under-Sheriffe) may make Certificate thereof within the moneth after that inquiſition taken.

Lamb. 320. Cromb. 63. Where there be ſeverall Certificates made, or that the Certificate and the inquirie doe diſagree, then that ſhall bee preferred which is beſt for the King.

If there ſhall be twenty parties to a riot, and the Jurie ſhall finde but ten of them guilty, yet the Iuſtices may certifie that twenty committed that riot, and this Certificate of the Iuſtices ſhall ſtand good.

Alſo it ſeemeth, if any thing matteriall happen to bee omitted or left out in the inquiſition, yet it may bee ſupplied by this Certificate, and it ſhall ſtand good.

Lamb. 320. If after the inquiry, and before the Certificate made, the Sheriffe ſhall die, or one of the Iuſtices be put out of the Commiſſion, no certificate can then be made, by the opinion of Maſter *Marrow*.

For the forme of ſuch Certificate, See *hic cap.* 130.

Upon the default of the two next Iuſtices, and Sheriffe, or under-Sheriffe, for not executing the ſaid Statute of 13. *H.* 4. 7. the party grieved may have a Commiſſion out of the Chancery, to enquire as well of the Riot, as of the defaults of the ſaid Iuſtices of Peace, and Sheriffe, or under-Sheriffe.

Commiſſion.

2. H. 5. 8. *Fol.*

2. H. 5. *Fo.* Alſo the Lord Chancellor of England as ſoone as he ſhall have notice of ſuch a Riot, ſhall ſend the Kings Writ to the Iuſtices and Sheriffe, commanding them to execute the ſaid Statute of 13. *H.* 4.

And although that ſuch writ come not to the ſaid Iuſtices, Sheriffe, or under-Sheriffe, yet they ſhall not bee excuſed of the penalty of 100. *li.* aforeſaid, if they make not execution of the ſaid Statute. *Ibid.*

2. H. 5. c. 9. 1. H. 6. 14. Rol. 374. Alſo, if any aſſemblies of people in great number, in manner of inſurrection, or other rebellious riots, ſhall bee done and committed, and that ſuch offenders ſhall withdraw themſelves, to the intent to avoide

the execution of the Law, then, upon Certificate by two Iuſtices of Peace and the Sheriffe of that Countie, by letters under their ſeales, to the Lord Chancellor of England, of the ſame riot, and that the common voice and fame thereof runneth in the ſaid County, the Lord Chancellor may make a *Capias* to the ſaid Sheriffe, for the apprehending of ſuch offenders; and after, if need be, a writ of proclamation, that the ſaid offenders yeeld themſelves in the Kings Bench, at a certaine day, upon paine to be convict thereof.

Rogues and Vagabonds. Cap. 47.

THe benefit of this Law, and of the former Law, made for the ſetting to worke, and releefe of the poore, are both of them worthy of the care of the Iuſtices of Peace, and of their beſt endeavours, for the due execution thereof; for by them,

1. Idleneſſe is very much repreſſed: idleneſſe, which of it ſelfe is the root of all evill.

2. Infinite ſwarmes of idle Vagabonds are rooted out, which before wandred up and downe, to the great danger & indignitie of our Nation.

3. We our ſelves are now compelled but to releeve the poore of our owne Pariſhes (whoſe conditions and eſtates we know) and to a certainty of gift, wherewith we are now taxed by our neighbours: whereas before we gave we knew not what, nor to whom; and many times to ſuch as were ready to have cut our throats, if opportunity had ſerved them.

In this title of Rogues, I have intermingled certaine reſolutions of the Iudges, made upon the Statute 39. *El. cap.* 4. for the better underſtanding thereof: which reſolutions you ſhall finde in M. *Lambert*.

One Iuſtice. Any one Iuſtice of Peace may appoint all Rogues and Vagabonds, which ſhall be taken begging, wandring, or miſordering themſelves, to be ſtripped naked from the middle upward, and to be whipped till their body be bloudy, 21. *Iac. cap.* 28. 39. Eliz. 4. P. Vag. 1. 1. Iac. 7.

After ſuch whipping, the ſaid Iuſtice of Peace ſhall make them a teſtimoniall under his hand and ſeale, teſtifying their puniſhment, and mentioning the day and place thereof, and the place whither they are to goe, and what time they are limited to paſſe thither, &c.

The forme of ſuch a Teſtimoniall, *vide hic cap.* 124.

All Rogues and Vagabonds are to bee ſent and conveyed forthwith, from Pariſh to Pariſh by the Officers (*ſc.* the Conſtables of every of the ſame) the next ſtraight way to the pariſh where they were borne (if it may bee knowne by the parties confeſſion or otherwiſe:) Or, the place of birth being not knowne, then to the Pariſh where ſuch perſon laſt dwelt by the ſpace of one yeere, there to put themſelves to labour: Or, (not being knowne where ſuch perſon was borne or laſt dwelt, then) to the pariſh thorow which ſuch perſon laſt paſſed without ſuch puniſhment; and then the Officers of ſuch Village or Pariſh, are to convey them to the Houſe of correction of that Limit wherein that Village is, or to the common Gaole; there to remaine and bee imployed in worke till P. Vag. 1. 39. Eliz. 4. 21. Iac. 28. 3. Car. 4.

till they ſhall be placed in ſervice for one whole yeere; or not being able of body, till ſuch perſon ſhall be placed in ſome Almeſhouſe of that Countie.

Reſol. 6. The Rogue, whoſe place of birth or laſt dwelling cannot be known, having wife and children under ſeven yeeres of age, they muſt goe with the husband to the place where they were laſt wilfully ſuffered to paſſe without puniſhment; where the children muſt be relieved by the worke of their parents, though the parents be committed to the houſe of correction.

Againe, by the Statute made 7. *Iac. cap.* 4. All ſuch Rogues, Vagabonds, ſturdy beggars, and other idle and diſorderly perſons, as ſhall be found and apprehended in the generall privie Search made by the Iuſtices warrant, &c. ſhall be brought before the ſaid Iuſtices at their ſaid meeting, and ſhall be there puniſhed; or by the ſaid Iuſtices warrant ſhall be ſent to the houſe of correction, there to be ſet on work, kept, and corrected, &c.

But here, firſt to deſcribe you theſe manner of perſons (*ſc.* Rogues and vagabonds) that you may the better know them.

A Vagabond (as one ſaith) is he which hath neither certaine houſe, nor ſtedfaſt habitation, but liveth idly, and loytering: A man (as another deſcribeth him) *ſine re, ſine ſpe, ſine fide, ſine ſede.*

A Rogue may be ſo called, *Quia oſtiatim rogat.* *Minſh.*

Or it ſignifieth an idle beggar that wandreth from place to place, without a lawfull Paſport.

A Beggar, *Mendicus quaſi manu dicens* (ſpeaking with the hand) *Mos enim erat apud antiquos Egenum ſilentio manum extendere.*

And yet Vagabond in its proper ſenſe, is one that wandreth about: and a Rogue and a Vagabond ſeeme to be all one; for the Latine words, *vagus* and *vagabundus*, ſignifie the one and the other: So as whoſoever wandreth about idly and loyteringly, is a Rogue or Vagabond, although he beggeth not. *quod nota.*

33. Hen. 4. 7. Vag. 2. And more particularly, all theſe perſons here under mentioned, being above the age of 7. yeeres, and offending as hereunder is mentioned, ſhall by our Lawes be adjudged Rogues, or at leaſt ſhall be puniſhable as Rogues.

1. All perſons above the age of 7. yeeres, going about begging, upon any pretence or colour whatſoever: yea, although they be licenced by any ſubject, except it be in the caſes hereafter mentioned.

2. All idle perſons going about the Country, either uſing any ſubtill craft, or unlawfull games, or being fortune-tellers, or juglers, or uſing any other like craftie ſcience.

3. All Procters, Patent-gatherers, or Collectors for Gaoles, priſons, or Hoſpitals, wandring abroad.

1. Iac. 7. 4. All Feneers, Bearewards, common Players of * Enterludes, and Minſtrels wandring abroad. 21. *Iac. cap.* 28.

1. Iac. 7. 5. All Pedlers, pettie Chapmen, Tinkers, and * Glaſſe men wandring abroad. 21. *Iac. cap.* 28. Eſpecially if they be unknowne; or have not a ſufficient Teſtimoniall.

6. All wandring persons and common Labourers, being able in body, using loytering, and refusing to worke for reasonable wages, not having living otherwise than by labour to maintain thẽselves, are Rogues. And yet such persons as be of any Parish, and have able bodies to worke, and be no wanderers abroad out of the Parish, though they refuse to worke at such wages as is taxed or commonly given in those parts, are not to be sent to their place of birth or last dwelling, &c. but to the house of correction. See *tit. Poore.* Resol. 10.

7. Poore persons appointed to aske reliefe in the Parish where they dwell, by the Overseers thereof, if they shall begge in any other sort than is so appointed them; or shall beg by the High-wayes, though in their owne Parish. See 39. *El. cap.* 3. *& Lamb.* 427. Resol. 15.

And yet such persons are not to be sent to their place of birth, or out of the Towne, except it be to the house of correction.

So it seemeth of all other poore persons begging in the Parish where they dwell (without the appointment of the Overseers) they are to be sent to the house of correction, *quære tamen.*

8. All persons wandring, and pretending themselves to be Ægyptians, or wandering in the habit and forme of Ægyptians, not being Felons.

9. Souldiers or Mariners that shall beg (except as before *hic cap.* 40. *& hic postea*) or shall counterfeit any Certificate from their Generall, Governour, Captain, Lieutenant, Marshall, Deputie, or Admirall, shall be adjudged as common Rogues, and shall have the like punishment. But Souldiers and Mariners in divers like cases shall incurre the danger of Felonie. See the title *Felonies by Statute.* 43. Eliz. 3. P. Chapt. 23.

10 Poore diseased or impotent persons, travelling to the Bathes for ease of their griefes, (and being licenced) yet if they beg; Or if such person be not licenced by two Justices; Or shall not returne home againe, according as they are limited by their said Licence; Or shall not be provided of necessary reliefe, &c. for their travell; They shall be punished as Rogues. 39. Eliz. 4. P. Vag. 7.

11. A Rogue that hath beene punished according to this Statute, and hath a Testimoniall, if through his or her default they doe not accomplish the order appointed by the said Testimoniall, then are they to be whipped againe as Rogues, and so as often as any default shall be found in them. &c. P. Vag. 3.

12. A Rogue, &c. that shall goe with a generall pasport, *sc.* which is not directed from Parish to Parish, is still to continue a Rogue, and may be punished by whipping againe. Resol. 13.

So also may such a Rogue, as shall carry his owne pasport without a guide: For by the letter of the Statute, they are to be sent, *sc.* conveyed from Parish to Parish by the Officers of every the same.

13. Servants departing out of service, (*sc.* forth of one citie, towne, or parish to another, or out of one Hundred or Countie, to serve in another) without a testimoniall, &c. or which shall be taken with any counterfeit or forged testimoniall, shall be whipped as vagabonds. 5. Eliz. 4. P. Labor. 6.

14. Persons infected, or dwelling or being in any house infected with 1. Inc. 31. P. Plag. 4.

with the Plague, that contrary to the commandement of any officer, ſhall wilfully goe abroad and converſe in company, ſhall bee puniſhed as vagabonds.

15. So all perſons being able to labour, and thereby to releeve themſelves, and their families, that ſhall run away, or threaten to run away and leave their charge to the Pariſh, &c. 1. *Iac. cap.* 28. 7. Iac. 4.

But ſuch offenders laſt mentioned are to bee dealt withall by two Iuſtices of Peace; *ſc.* All ſuch perſons ſo running away, ſhall bee taken to be incorrigible Rogues, and ſhall endure the paines of incorrigible Rogues, *ſc.* they ſhall be ſent (by two Iuſtices of Peace) to the houſe of Correction, or to the Gaole, there to remaine untill the next Quarter Seſſions, and then he or ſhee ſhall bee there branded in the left ſhoulder with an hot iron, &c. And from the Seſſions ſhall be ſent to the place of their laſt dwelling, &c. 1. *Iac. cap.* 7. *Incorrigible Rogues.*

And all ſuch perſons ſo threatning to runne away (the ſame being proved by two ſufficient witneſſes upon oath, before two Iuſtices of Peace of that diviſion) ſhall bee by the ſaid Iuſtices ſent to the houſe of correction (unleſſe ſuch perſon can put in ſufficient ſureties for the diſcharge of the Pariſh) there to be detained and dealt withall as a ſturdie and wandring Rogue; and from thence to bee delivered at the quarter Seſſions; or at the meeting of the Iuſtices in that diviſion, made for a generall privie ſearch for the apprehending of Rogues, according to this Statute of 7. *Iac. cap.* 4. And are not otherwiſe to be delivered out of the houſe of correction.

But upon ſuch their delivery, they are not to be ſent to their place of Birth (as wandring Rogues) but to the place of their dwelling, if they have any; if not, then to the place where they laſt dwelt by the ſpace of a yeere; &c.

And ſo of perſons infected, &c. with the Plague, and puniſhed as vagabonds as aforeſaid.

No childe under the age of ſeven yeeres, ſhall bee adjudged a Rogue (within the Statute of 39. *Eliz.* 4.) But it ſeemeth, ſuch children being vagrant, muſt bee ſent to and placed with the father, or husband of the wife: and if he be dead, then with the mother, (where ſhe was borne, or laſt dwelt by the ſpace of one yeere.) And ſuch children once thus ſetled or placed, muſt there remaine, and not be ſent from thence to their place of birth, though after the parents die, or run away, or that the ſaid children grow above the age of ſeven yeeres, yea, and though the ſaid children after begge and prove vagrant in that towne, for there they muſt be ſet to labour. See *Reſol.* 4. 9, 10. 39. Eliz. 4. 7. Iac. 4. *Children.*

Children above 7. yeeres of age, going abroad vagrant, or begging in the countrey, ſhall bee puniſhed as Rogues, and ſent to their place of birth, &c. 39. Eliz. 4. Reſol. 4.

The wife being a vagrant Rogue, muſt be ſent to her husband, though he be but a ſervant in another towne. Reſol. 5.

If the husband or wife have a houſe (though as an Inmate) and either of them Rogue about, they are to bee ſent to the towne where that houſe is. Reſol. 3.

No man is to be put out of the towne where he dwelleth, nor to bee sent to their place of birth, or last habitation, but only a vagrant Rogue, *&c.* such as wander abroad in the countrey; and not such as are vagrant, or doe beg, in the same towne where they dwell. Resol.

Such as their estates or their houses bee expired, and servants whose time of service is ended, they shall not be put out of the townes where they last dwelt, or served, &c. *Vide tit. Poore.*

Who may beg. The Iustices of Peace (dwelling in or neere the place where any Seafaring man suffering shipwracke, shall land) may make a testimoniall under his hand to such person (not having wherewith to releeve himselfe in his travell homewards) setting downe in such testimoniall, the place and time, where and when he landed, and the place of his birth or dwelling unto which hee is to passe, limiting him therein a convenient time for his passage; which person (without the danger of this law) in his direct passe, and within his time in such his testimoniall limited, may aske and receive necessary reliefe. 39. El. 4. P. Vag. 14.

Persons suffering shipwracke.

Souldiers, &c. from sea. The Iustices of Peace in or neere the place where any poore, idle, and wandring souldier or mariner (comming from the seas, or from beyond the seas) doth land, ought upon request, to give him a testimoniall under his hand, licensing him thereby to passe the next and direct way to the place whither hee is to repaire; expressing therein the time and place of such his landing, with the place of his dwelling, or birth, to which he is to passe, and to limit him a convenient time for his passage thither: and such person pursuing such licence, may aske and receive necessary reliefe, without the danger of Law. 21. *Iac. cap.* 28. 39. El. 17. P. Mar. 9.

But now *quare* of these persons, and see *infra.*

Rogues whipped. Also one Iustice of Peace, (or the Constable, with the Minister, and one other of the Parish) after the whipping of a Rogue according to the Statute, may make the said Rogue a Testimoniall under their hand and seale, for the conveying of such Rogue according to this Statute of 39. *Eliz.* 4. 39. El. 4. P. Vag. 3.

And yet such Rogues may not beg in their travell, neither may the Constable of the Parish thorow which they passe, nor any other person, give them any releefe (as it seemeth) for that were contrary to the Statute 1. *Iac. cap.* 7. and a forfeiture of x.s. But now for that after so many yeeres (since the making of these Statutes) they will not bee reformed of their Roguish life, they are rather to bee deale withall as incorrigible Rogues, *&c.* to bee carried by the Constable before the next Iustice of Peace, and then by Warrant from two Iustices to bee sent to the house of Correction, or to the Gaole, there to remaine untill the next Quarter Sessions, &c. See Statute 1. *Iac.* 7. and the directions of Sir *Francis Harvey* at Summer Assises 1630. *hic postea.*

And as for the Souldier or Mariner (especially such as are sicke, hurt, or maimed) they now are usually, or may bee, releeved with money by the Treasurers of every County where they come, *viz.* with such convenient summes, as may carry them to the next County; and this is by a latter Law, and therefore now it may seeme unfit, that either the Constable should releeve them, or suffer them to beg or aske releefe in their 43. El. 3. P. Cap. 3.

Townes

Townes, for ſo the Countrey ſhall be double charged towards their relieſe, *ſc.* in paying to the Treaſurer towards their relieſe, and againe in giving them at home at their doores, 27. *Iac. cap.* 28.

So that I doe not finde, that any one or more Iuſtices of Peace may or can in any caſe licence any man to beg, or aske relieſe at all; but onely may make a teſtimoniall or licence in the two firſt former caſes, *ſc.* to ſuch as ſuffer ſhipwracke, and ſouldiers, or mariners, comming from the Seas, to paſſe from place to place; and in thoſe two caſes onely, the Law tolerateth them to aske and receive neceſſary relieſe, as aforeſaid. For I obſerved before, that poore diſeaſed perſons travelling to the Baths (though licenced by two Iuſtices of Peace) yet they might not beg, and beſides muſt be provided of maintenance for their travell. See more in this title before.

39. Eliz. 4.

Likewiſe poore priſoners delivered out of Gaoles, may in no wiſe beg. *Stat.* 39. *Eliz. cap.* 4.

I obſerve further, that (by the Statute 39. *Eliz. cap.* 3. though it bee now expired) no perſon whatſoever, might goe wandring abroad and beg, in any place whatſoever by licence or without, upon paine to be taken as a Rogue.

And therefore *quære*, of ſuch briefes and licences as lately have uſually come from or in the name of the Lord Mayor of London, licencing poore perſons to travell, and to aske or beg relieſe in their travell, and by generall paſports, not directing them from Pariſh to Pariſh. See more in this title after *Reſol.* 13.

5. Eliz. 4.

And yet any one Iuſtice of Peace may licence labourers in hay and harveſt time, to paſſe from one Countrey to another to worke; but not to wander, or beg: See the title *Labourers.*

Two Iuſtices.

And ſo, any two Iuſtices of Peace may make a teſtimoniall to Servingmen, (or other ſervants, as it ſeemeth) departing from their Maſters, but ſuch perſons under colour thereof may not wander up and downe idly, nor beg: ſee the title *Labourers.*

5. Eliz. 21. 5. Labor. 7.

39. Eliz. 4. 5. Vag. 4. 1. Iac. 7.

Any two Iuſtices of Peace of the limit where any incorrigible rogue ſhall be taken (the one being of the *Quorum*) may commit ſuch rogue to the houſe of correction, or to the Gaole, there to remaine untill the next quarter Seſſions of the peace, and there to be dealt withall as incorrigible rogues, according to the Statute, 1 *Iac. cap.* 7. See *hic antea.*

5. Vag. 4. 11. 39. Eliz. 4.

Now theſe incorrigible rogues be ſuch as ſhall either appeare to bee dangerous to the inferiour ſort of people; or ſuch as will not be reformed of their roguiſh kinde of life.

Of the firſt ſort are ſuch as ſhall offer any violence, or ſhall uſe any threatning ſpeeches, or other like miſdemeanours towardes any perſon.

Of the other ſort ſeeme theſe which follow, and ſuch like.

1. Such as having had puniſhment, and thereupon ſent to their place of birth, &c. and there ſetled according to the law, ſhall notwithſtanding fall to their roguiſh life againe.

Reſol. 1.

2. A Rogue that affirmeth that he was borne in ſuch a Towne, in ſuch a Countie, and is ſent thither, if he were not borne there in truth, he is

to be ſaid an incorrigible Rogue, and is to be ſent thence (by two ſuch Iuſtices as aforeſaid) to the houſe of Correction in the Countie, and if there be none, then to the Gaole; untill the next Seſſions, there to be dealt withall according to the Statute.

3. The ſame courſe is to be obſerved (if it appeare not where he was borne) if he untruly affirme that he was laſt dwelling in ſuch a Towne and Countie, by the ſpace of a yeere, and was not. Reſol. 2.

All perſons being able to labour, and thereby to relieve themſelves and their families, that ſhall run away out of their Pariſhes, and leave their families or children to the Pariſh, ſhall be deemed and puniſhed as incorrigible rogues. Their puniſhment ſee *hic antea*. 7. Iac. 4.

Alſo all perſons being able to labour, as aforeſaid, that ſhall threaten to run away, and leave their families, as aforeſaid, it being proved by two ſufficient witneſſes upon oath, before any two Iuſtices of Peace of that diviſion, ſhall be ſent by the ſaid Iuſtices to the houſe of correction, there to be dealt withall and detained as ſturdy and wandring Rogues, &c. unleſſe ſuch perſons ſhall put in ſufficient ſureties for the diſcharge of the Pariſh. See *hic antea*. 7. Iac. 4.

All ſuch perſons as ſhall in any wiſe diſturbe, or hinder the execution of the Law, made 39. *Eliz. cap.* 4. or any part thereof, concerning the puniſhment, and conveying of Rogues; or ſhall make reſcous againſt any officer or perſon authorized for the execution of this Statute, ſhall forfeit for every ſuch offence v. li. and ſhall be bound to the good behaviour; and any two Iuſtices of Peace may binde ſuch offenders to the good behaviour, and may alſo by Warrant under their hands and ſeales, cauſe to be levyed by diſtreſſe and ſale of the offenders goods, the ſaid ſumme of v. li. upon the confeſſion of the offenders, or upon the teſtimony of two ſufficient witneſſes, before the ſaid Iuſtices, of ſuch offence. 39. Eliz. 4. P. Vag. 3. P. Vag. 5. 11.

Within the compaſſe of which words and Statute, ſeeme to be theſe offenders and offences which follow:

1. To ſend Rogues by a generall Paſport, without conveying them from Pariſh to Pariſh, is a let to the conveying of Rogues, according to the Statute, and ſo a forfeit of v. li. upon them that ſhall ſo ſend them, and they are to be bound to the good behaviour. Reſol. 13.

2. Note that all Rogues are to be conveyed to their place of birth, &c. by the Conſtables of every Pariſh (*ſc.* from Conſtable to Conſtable, the next ſtrait way.) And therefore if the Officer (*ſc.* the Conſtable) of any Pariſh will not receive a Rogue, to convey him to the place where he was borne or dwelt, this is a forfeiture of v. li. in ſuch Officer that ſhall not receive the partie, to convey him or her, and he is to be bound as aforeſaid, to his good behaviour. Reſol. 14.

3. So it ſeemeth, if the Conſtable or other perſon, which ſhall convey a Rogue towards his place of birth, &c. if he ſhall not deliver him to the Conſtable of the next Pariſh.

4. If any be ſent to a Towne whereto he ought to be ſent, and is refuſed, being a ſturdy or an impotent Rogue, the perſons ſo refuſing, ſhall forfeit v. li. and may be bound to the good behaviour. Reſol. 15.

Note

Reſol. 12. Note that he which is to be ſent, is to be delivered or offered to the Church-wardens and Overſeers, and if they ſhall refuſe him, they ſhall forfeit v. li. as aforeſaid.

39. Eliz. 4. P. Vag. 1. Alſo any two Iuſtices of Peace (by Warrant under their hands and ſeales) may cauſe to be levied by diſtreſſe and ſale of the offenders goods, all fines and forfeitures appointed, or to grow by this Act of 39. *Eliz.* 4.

1 Iac. 7. or by the Statute of 1. *Iac. cap.* 7. by conviction of any perſon, for any offence hereunder mentioned: (But ſuch conviction muſt be, either by confeſſion of the offender, or by the teſtimony of two ſufficient witneſſes before the ſaid Iuſtices.) As namely:

P. Vag. 3. 1. The Miniſter which ſhall not keepe a Regiſter booke, and therein enter the ſubſtance of every teſtimoniall made for the conveying of Rogues (puniſhed in his Pariſh) ſhall forfeit for every default five ſhillings.

39. Eliz. 4. 2. The Conſtable which ſhall not doe his beſt endeavour, for the apprehending, puniſhing, and conveying of all Rogues which ſhall bee found in their Pariſh, ſhall forfeit for every ſuch default tenne ſhillings.

1. Iac. 7. P. Vag. 5. 3. The Conſtable which ſhall not cauſe to be puniſhed, and to be conveyed (according to the Statute of 39. *Eliz.* 4.) all ſuch Rogues as ſhall be brought or ſent to him by any of his neighbours, ſhall forfeit for every ſuch default, xx. s.

Note that the Conſtable is to execute the ſaid puniſhment of whipping of Rogues, either himſelfe, or by ſome other by his procurement. See to the like purpoſe in the title *Treſpaſſe, cap.* 57.

1. Iac. 7. P. 5. 4. Every perſon ſhall apprehend, or cauſe to be apprehended, ſuch Rogues as he ſhall ſee or know to reſort to his houſe, to beg, or receive any almes, and him or them ſhall carry, or cauſe to be carried to the next Conſtable, or elſe ſhall forfeit for every ſuch default, x. s.

Maſter *Perkins* in his Expoſition of the eighth Commandement, *Thou ſhalt not ſteale*, ſaith, That hee breakes that Commandement, which being luſtie, lives by begging. And ſo of him that ſhall relieve, feede, or cloath ſtout and luſtie Rogues and Beggars. *Perkins pag.* 91. & 749.

39. Eliz. 4. 5. Every perſon that ſhall willingly bring or convey in any veſſell, out of Ireland, or the Iſle of Man, into this Realme, any Rogue, or any ſuch as ſhall be like to live by begging, &c. ſhall forfeit for every ſuch perſon ſo brought over, x. s.

39. Eliz. 4. 1. Iac. 7. P. 11. All (or the moſt part of) which fines and forfeitures appointed, or to grow by theſe acts (39. *Eliz.* 4. & 1. *Iac.* 7.) are to be imployed to the maintenance of the houſes of correction, or reliefe of the poore, where the offence ſhall be committed, at the diſcretion of any two Iuſtices of Peace (as it ſeemeth) of the ſame limit.

39. Eliz. 4. P. Inſt. 74. P. Vag. 11. Note that any two Iuſtices of Peace (whereof one to be of the *Quorum*) have power to heare and determine all cauſes that ſhall grow, or come in queſtion, by reaſon of the Statute made for the puniſhment of Rogues. 39. *El.* 4.

At Summer Aſſiſes held at Royſton for the Countie of Cambridge,

Anno

Anno Dom. 1630. Sir *Francis Harvey* delivered theſe rules or directions, upon the Statutes made againſt Rogues: *viz.*

1. That now (after ſo long time ſince the making of the Statute of 39. *Eliz.*) no Paſſe is to be allowed for theſe wandring people, and that ſuch of them as doe paſſe or travell, though with any paſport, yet are to be puniſhed as Rogues, notwithſtanding ſuch their paſport. And herewithall agreed Sir *Nicholas Hyde* at Cambridge Aſſiſes *Anno Dom.* 1630.

2. That if any Alehouſe-keeper, or other perſon, ſhall but lodge a Rogue, this is a relieving of them, and contrary to the Statute of 1. *Iac.* and is a forfeiture of x. s.

3. That giving of money by a Conſtable, to a Rogue, is a relieving of a Rogue within this Statute, and a forfeiture of x. s. *Haec ille.*)

For the way to rid the Countrey of theſe Rogues, is to give them either due puniſhment (and that often, yea at every Towne, if they will not be reclaimed) and to keepe them from lodging and other reliefe, as much as may be; or els to ſend them to the Gaol, as incorrigible Rogues. (*Vide hic antea.*) For puniſhment is all the Charitie that the Law affoordeth them.

Any two Iuſtices of Peace may licence diſeaſed perſons to travell to Bath or Buxton, for the eaſe of their griefes; ſo as they be provided of neceſſary maintenance for the time of all their travell, &c. but they may not beg. See hereof more in this title before. 39. Eliz. 4. P. Vag. 7.

The Iuſtices of Peace, or the more part of them, within their diviſions twice in every yeere at the leaſt, ſhall meet for the execution of the Statute 7. *Iac.* 4. againſt Rogues and Vagabonds, ſturdie Beggers and other idle and diſorderly perſons. And ſome foure or five dayes before their meeting, they ſhall by their warrants command the Conſtables of every Hundred, Towne, and Pariſh, &c. within their ſeverall diviſions, to make a generall privie ſearch in one night, for the apprehending of all Rogues, and wandring and idle perſons, to be brought before them at their ſaid meeting, there to be examined of their idle life, and there to be puniſhed: or otherwiſe by Warrant of ſuch Iuſtices to be ſent to the houſe of Correction within the ſaid Countie: which ſending to the houſe of Correction ſhall be by the ſaid Conſtables who apprehended them, (yet at the charge of the Hundred.) But by whom they ſhall be puniſhed and whipped (*quare*) it ſeemeth by the Officers of the Towne where the Iuſtices ſo ſit or meet; and thereupon to be ſent to their place of birth, &c. 7. Iac. 4. 21. Iac. 28.

Alſo at the ſame meeting, the Conſtables of every Hundred and Pariſh, are to appeare before the ſaid Iuſtices, and there ſhall give an account (upon oath) in writing, and under the hand of the Miniſter of every Pariſh, what Rogues they have apprehended as well in the ſame ſearch, as alſo between every ſuch their meetings, and how many they have puniſhed, or conveyed to the houſe of correction. 7. Iac. 4.

Alſo the ſaid Iuſtices at their ſaid meetings, may aſſeſſe reaſonable fines (being not above 40. s.) upon any the Conſtables, as well for their neglecting to performe this ſervice; *ſc.* in not appearing, or giving account, 7. Iac. 4.

count, as aforeſaid, as alſo for the neglecting the ſafe conveying of Rogues, and other idle & diſorderly perſons, ſent to the houſe of correction by Warrant from the ſaid Iuſtices of Peace: which conveying of ſuch perſons to the houſe of correction, muſt be at the charge of the Hundred, as is aforeſaid.

7. Iac. 4. Alſo the ſaid Iuſtices at their ſaid meetings, may deliver ſuch perſons as they have formerly ſent to the houſe of correction, from ſuch their meetings.

Robberie. Cap. 48.

27. Eliz. 13. P. Hoy and Cy. 8. 10. Co. 37. AFter a Robberie committed, the party robbed ſhall not have his action upon the Statute againſt the Hundred, except he ſhall with all ſpeed convenient, give notice of the ſaid Robbery, to ſome of the inhabitants dwelling in ſome Towne, Village, or Hamlet, neere to the place where ſuch Robberie was committed: And alſo except he ſhall commence his ſuit or action within one yeere next after ſuch robbery committed: And alſo except hee ſhall firſt be examined upon his oath (within 20. dayes next before ſuch action brought) by ſome one Iuſtice of Peace (of the County where the Robbery was committed) dwelling within, or neere to the ſaid Hundred, where the Robbery was done, whether he doth know the parties that committed the ſaid Robbery, or any of them: and if hee knoweth any of them, then alſo (before ſuch action brought) hee ſhall bee bound before the ſame Iuſtice by ſufficient recognizance, to proſecute effectually the ſaid offenders, by indictment, or otherwiſe, according to the due courſe of Law. *Vide Plo.* 128. *One Iuſtice.*

In action ſur le Statute de Winchest. ceux points ont eſſe Reſolve in Communi Banco: ſc.

1. *Le party Robb. doner notice ſpeedely al prochein village, ou al aſcun inhabitant prope al Robbery: & le declaration in tiel caſes, eſt que le pls. immediate apres le Robbery fait, Levit Hue & Crie, & done notice a le ville ou le Robberie fuit fait, & alibi per totum Hundredum al inhabitants, &c. Plo.* 128.

2. *Le party doit commence ſon ſuit deins* 1. *ann. apres le Robbery, & apres le* 40. *jours puis le Robberie.*

3. *Le partie Robb. doit eſſe examin ſur ſon Serement, devant le Iuſtice de P. ſil nad conuzance del Robberie, &c.*

4. *Si mon ſervant ou Carrier que carrie mes bienz ſoit Robb. ceſty de que les bienz fuer priſes ſerra examin, & jure devant le Iuſtice de P. & nemy le owner del bienz: & ſi le ſervant ou Carrier ne voel eſſe examin, l'owner n'ad remedie.*

5. *Que home poit eſſe jure in ſon proper cauſe, ſc. quant argent ſon ſervant avoit.*

29. Eliz. 13. P. Hoy and Cy 47. After a Robbery committed, and notice thereof given, as aforeſaid, the whole Hundred muſt anſwere the loſſe, if the Robbers be not taken within forty dayes. And if the Robbery bee done in the diviſion of two Hundreds,

Hundreds, both the Hundreds, and the Franchiſes within them ſhall be anſwerable for the Robbery done, and alſo for the dammages. *Stat. Winch. cap. 2.*

And yet for that the party robbed hath his recovery and execution againſt ſome one or few perſons of that Hundred, therefore for a contribution to bee yeelded from the reſidue of the ſaid Hundred, upon complaint made by the parties againſt whom ſuch recovery and execution is had; any two Iuſtices of Peace (the one being of the *Quorum*) being of the ſame Countie, and inhabiting in or neere the ſame Hundred where ſuch execution ſhall be had, may aſſeſſe and tax according to their diſcretions, proportionably, all and every the Townes, Pariſhes, and Hamlets, as well of the ſame Hundred (where the ſaid Robberie was committed) as alſo of the liberties within the ſaid Hundred, towards an equall contribution to be had for the reliefe of the parties charged: The which taxations or ſummes the Conſtables of every Towne, ſhall within their Towne, Pariſh, or Limits, rateably and proportionably taxe and aſſeſſe upon every inhabitant and dweller in every ſuch Towne, Pariſh, Village, or Hamlet, for and towards the payment of ſuch taxation and aſſeſſement ſo made by the ſaid Iuſtices upon ſuch Towne, &c. And if any inhabitant of ſuch Towne, &c. ſhall refuſe to pay the ſaid taxation, ſo by the Conſtables taxed, then it ſhall bee lawfull for the ſaid Conſtables, and every of them to diſtreine for the ſame, &c. And the ſame diſtreſſe to ſell, and the money thereof comming, the ſaid Conſtables muſt deliver over to the ſame Iuſtices, or to one of them, within ten dayes after collection: All which the ſaid Iuſtices ſhall deliver over (upon requeſt) to the parties charged, to whoſe uſe the ſame was collected. 27. Eliz. 13.

Note that the inhabitants of any other Hundred (within the ſame County where the Robbery was committed, or within any other County, with the Franchiſes within the Precincts of ſuch Hundred) wherein negligence, fault, or defect of purſuit, and freſh ſuit after Hue and Crie made, ſhall happen to be, ſhall anſwere and ſatisfie the one moitie or halfe, of all and every ſuch ſummes of money, and dammages, as ſhall be recovered or had againſt the Hundred in which the Robbery was done. Ibid.

And the like taxation, aſſeſſement, levying and payment, as aforeſaid, ſhall bee had and made for a contribution within every Hundred, where there was any negligence, fault, or defect of purſuit, and freſh ſuit after Huy and Crie, *viz.* if upon ſuit any recovery and execution of any money, or any dammages ſhall be had againſt ſome one or few perſons of that Hundred, where ſuch default was (towards the eaſe of the Hundred, where the Robbery was done) upon complaint made by the parties ſo charged, to any two ſuch Iuſtices of Peace; the ſaid Iuſtices may make the like aſſeſſement, &c. towards the releefe of the ſaid parties ſo charged. 27. Eliz. 13. P. Huy and Cry 6.

Note that if any man be robbed in his houſe, the Hundred ſhall not be charged therewith, whether it were done in the day or in the night. Co. 5. 6.

Alſo a Robbery done in the night ſhall not charge the Hundred: but yet if it be in the day time, or by day light, though it bee before Sunne riſing, Co. Ibid.

riſing, or after the Sun-ſetting, the Hundred ſhall anſwer for it.

39. Eliz. 13. P. Hey. &c. Ca. 7. 7. If upon purſuit any one of the offenders be apprehended, the Hundred ſhall not be charged, although the reſidue of the offenders happen to eſcape; but purſuit without apprehending ſome one of the Robbers, is no excuſe.

Cromp. 179. If the partie that was robbed ſhall himſelfe take any of the theeves after Huy and Crie made, this ſhall excuſe the Hundred.

Although that one of the theeves be taken, yet if Huy and Crie be not duely made, the towne where the default is, ſhall be amerced; But the partie robbed ſhall have no remedy for his money (of the Hundred) in regard that one of the theeves is taken, and this is by force of the Statute 27. *Eliz.* whereas the Amerciament is by force of the Statute of Wincheſter.

Dyer 370. P. R. 155. It ſeemeth by my Lord *Dyer*, *An.* 22. *Eliz.* that the Statute is ſatisfied, if the names of the offenders be deſcryed, ſo that they may bee indited and outlawed; *quære inde*, for the words of the Statutes of 13. *Ed.* 1. and 28. *Ed.* 3. are, That the Countrey muſt anſwer for the bodies of ſuch offenders. *Winch.* 13. *Ed.* 1. *cap.* 2. *& ſtat.* 28. *Ed.* 3. *c.* 11.

Nota, the partie robbed muſt bring and commence his action within xx. dayes next after his examination taken before the Iuſtice of Peace. 36. *Eliz. Dennes caſe.*

Alſo the Iuſtice of Peace muſt be abiding within the Countie, at the time of the examination taken by him, as it ſeemeth; for the Juſtice of Peace being out of the Countie, is but as a private man, and hath no authoritie to take ſuch examination. See the title, Iuſtices of peace, *hic. c.* 6.

If a man be robbed in Middleſex, and maketh Huy and Crie freſhly into Eſſex, if the townes adjoyning doe not according to the Statute of Wincheſter, the partie robbed may have his action of debt, in the one Countie, or the other, by *Fincham.* 15. *Ed.* 4. 18. *Br. Dett.* 104.

High-wayes leading from one Market-Towne to another, ſhall be inlarged, ſo that there be neither dike, underwood, nor buſh, whereby a man may lurke to doe hurt, within two hundred foot of the one ſide, and of the other; and if by default of the Lord that will not amend the waies as aforeſaid, any robberies be done therein, the Lord ſhall be anſwerable for the robbery: and if a Parke be neere the high-way, the Lord muſt ſet his Parke 200. foot of each ſide from the way, as aforeſaid; or elſe muſt make ſuch a wall, dike, hedge (or pale) that ſuch offenders may not paſſe to and fro there, *Winch.* 13. *Ed.* 1. *cap.* 5.

And every Iuſtice of Peace may cauſe ſuch high-wayes to be inlarged and cleanſed, as aforeſaid; See *hic antea tit. High-wayes.*

Sacramentum.

Sacraments. CAP. 49.

Three Iuſtices. IT ſeemeth that three Iuſtices of Peace (one of them being of the *Quorum*) may out of the generall Seſſions, take information and accuſation (by the oaths of two honeſt perſons) againſt ſuch as ſhall deprave, or unreverently ſpeake of the Sacrament of the body and bloud of our Lord and Saviour Ieſus Chriſt, againſt the Statute, &c. And may binde the accuſers (and ſuch other witneſſes as were by) by recognizance (in 5. li. a peece) to give in evidence at the day of tryall: But *M. Lamb.* maketh a *quare* hereof. 1. Ed. 6. 1. P. Inſt. 8. Lamb. 351.

Sabbath day, or Sunday.

NO Carrier with any horſe, nor Waggoner, Carter, nor Waineman, with any waggon, cart, or waine, nor any Drover with any cattell, ſhall travell upon the Sunday, upon paine that every perſon ſo offending ſhall forfeit xx. s. for every ſuch offence. 3. *Car. c.* 1.

If any Butcher ſhall kill, or ſell any victuall upon the Sunday, he ſhall forfeit for every ſuch offence, vi. s. viii. d. *Ibidem.*

One Iuſtice. Any one Iuſtice of Peace (Mayor, or head Officer of any Citie, or Towne Corporate) within their limits, upon their owne view of any of the ſaid offences, or upon proofe thereof upon oath by two or moe witneſſes, or upon the confeſſion of the party offending, may make their Warrant to any Conſtable or Church-warden (within their ſeverall limits, where ſuch offence ſhall be done) to levie the ſame forfeitures by Diſtreſſe, and ſale of the offenders goods, rendring to the partie the overplus. *Ibidem.*

Every Iuſtice, and head Officer aforeſaid, have power to miniſter an oath to ſuch witneſſes. *Ibidem.*

All the ſaid forfeitures ſhall be imployed to and for the uſe of the poore of the Pariſh where the offence ſhall be committed. *Ibid.*

And yet any ſuch Iuſtice, or other head Officer, out of the ſaid forfeitures, may reward any perſon or perſons that ſhall informe, or otherwiſe proſecute any ſuch offender, according to their diſcretions, ſo that ſuch reward exceed not the third part of the forfeiture. *Ibid.*

Provided that no perſon ſhall be impeached by this Act, unleſſe he be queſtioned thereof within ſix moneths after the offence committed. *Stat. 3. Caroli Regis cap. 1.*

There ſhall be no unlawfull exerciſes, &c. uſed upon the Sabbath day. *Hic ſup.* 23.

Againſt faires, and buying and ſelling upon the Sabbath day. *Hic cap.* 27.

Sewers. CAP. 50.

Six Iuſtices. SIx Iuſtices of Peace in the Shire where any Lawes and ordinances of Sewers are to be executed, (two being of the *Quorum*) within their limits, may execute the ſaid lawes & ordinãces of the Commiſſioners of Sewers, for one yeere after the expiration of any ſuch Commiſſion, 23. Eliz. 9. P. 26.

miſſion, except a new Commiſſion be publiſhed in the meane time.

Co. 10. 138. 140. Note that the proceedings of the Commiſſioners of Sewers, ought to be limited and bounded with the rules of Law and Reaſon, and according to the ancient Statutes and Ordinances. See *hic cap. 6.*

Co. 10. 143. Now theſe ancient Statutes concerning Sewers, are many, and are of three ſorts.

The firſt ſort conſiſt in defending, and repairing of the wals, bankes, and Sewers, &c. of this ſort are the Statutes made *9. H. 3. c. 15. & 16. & H. 6. c. 5. 18. H. 6. c. 10. 23. H. 6. c. 9. 12. E. 4. c. 6. 4. H. 7. c. 1. & 6. H. 8. c. 10.*

The ſecond ſort conſiſt in pulling downe, and removing Nuſances, &c. as the Statutes made, *9. H. 3. c. 23. 25. E. 3. 4. 45. E. 3. 2. 1. H. 4. 12. 9. H. 6. c. 9. & 12. E. 4. c. 7.*

The third conſiſteth of both ſorts, *ſc.* as well in repairing the bankes, &c. as in pulling down Nuſances, &c. And of this ſort are theſe Statutes following, *viz. 23. H. 8. c. 5. 25. H. 8. c. 10. 3. E. 6. c. 8. 13. El. c. 9.*

The inconveniences which enſue by theſe Nuſances, and eſpecially by the new levying or inhancing of Weares, Mills, Stanks, Fiſh-garths, Locks, Stakes, Kidles, and Flood-gates, are theſe: *ſc.* The common paſſage of ſhips and boats in the great rivers, is alſo meddowes, paſtures, and errable grounds adjoyning to the rivers, be greatly diſturbed, drowned, waſted, and deſtroyed, many people periſhed, and the young fry of fiſh deſtroyed. See *1. H. 4. c. 12. 4. H. 4. c. 11. & 12. E. 4. c. 7.*

The forme of the Commiſſion of Sewers, the authority of the Commiſſioners, as alſo the forme of their oath, you may ſee at large in the Statute *23. H. 8. c. 5. & P. 2. 4.*

Note that the King by the Common Law, may award his Commiſſion of Sewers, for the amending of the ſea-bankes, and for the repairing, amending, and ſcouring of other bankes, ſewers, gutters, ditches, pits, and trenches; ſo as the freſh-waters may have their direct courſe. *F. N. B. 113. a.* And ſee there the forme of that Commiſſion, and the proceedings thereupon.

Co. 10. 142. Theſe Commiſſioners cannot make any new great river, neither can they make new inventions (as artificiall mils to caſt out the waters, or ſuch like,) but ſuch new rivers, & new inventions (if they be for the publike good) ought to be made by Parliament. And yet the making new of an ancient bank or ſewer in a place more fit, and with ſome little alteration and diſtance, and upon neceſſity, ſeemeth to be warrantable.

Theſe Commiſſioners cannot caſt downe any mils, caudles or flankes, &c. erected before the time of *Ed. 1.* but onely may cauſe them to be abated, if they be raiſed above their ancient heights. *Co. 10. 138.*

Theſe Commiſſioners ought to tax none towards theſe reparations, &c. but ſuch as have prejudice or loſſe by the Nuſances or defaults, and which have benefit by the amending or removing of them. *Co. 10. 142.* See the Statute and forme of the Commiſſion. *6. H. 8. c. 5.*

Co. 5. 100. Co. 10. 143. Alſo theſe Commiſſioners ought to tax all that be in danger to bee indammaged by the not repairing, &c. (and that according to their land, &c.) And not to tax him onely whoſe grounds lie next adjoyning to the river, &c. (for, *Qui ſentit commodum, ſentire debet & onus.*

Note

Note that in all cases of taxing or rating by these Commissioners, it ought to be proportionable, and according to the qualitie, and yeerely value (of the lands, tenements, rents, commons, and fishings of the persons chargeable, and not according to the quantitie or content thereof. Co.5.100. Co.9.134.b Co.10.138.

And the yeerely value shall be accompted as the lands, &c. are of their owne nature, without respect to bee had to the bettering or impairing thereof by the good or bad husbandry of the owners or occupiers thereof (as it seemeth.) See *Co.L.* 171. & 179. to such purpose. Co.5.18.b 20, 139, 140.

Againe, if the owner of any land be bound by prescription, or otherwise to repaire the banke of a river, wall, or sewer, &c. he ought to do it: yet if he be not able to repaire it; or that there be other inevitable necessitie, or that there was no default in the party, but that the bankes, or wall, &c. are broken, or overflowen by tempest, or unusuall overflowing of waters, or the like (which bee the acts and handy-worke of God, and which no providence or industry of him that is bound to the reparations, could prevent,) in these cases the Commissioners ought not to charge him only with the whole, but may, and (in good discretion) ought, to charge and taxe all such as have any lands (or other profits) there in danger, or subject to losse, according to their lands, &c. Co.10.136.

But when one is bound by prescription, or otherwise, to repaire a bank or wall, &c. if there be any default in him, and the danger not inevitable, but that hee alone may well repaire it, the Commissioners may there charge him only to repaire this: and if by his default the danger become inevitable, or that by his default he alone is not able to repaire it whereby others are charged as aforesaid, every of them may have their Action of the case against him, &c. and shall recover their dammages according to their losse.

Also, where a man hath lands lying betweene the Sea, the river of Thames, or any other river, and his neighbours grounds, and is bound by prescription, or otherwise, to make, or keepe certaine banks, or to scoure certaine ditches or sewers, betweene his said neighbour and the said river or Sea, and doth not make, keepe, amend, and scoure the same, as hee ought to doe, by reason whereof his neighbours grounds are drowned, the party so indammaged shall have his Action of the case against the other for making default, &c. See *F.N.B.* 93. & 7. *H.* 4. 8. & 41. Co.10.139. & 143.

Also, these taxations ought to bee particular, *scil.* upon every severall owner, or occupier of lands, tenements, rents, commons, and fishings, &c. And not to be a generall summe in grosse upon a whole Towne. See more hereafter, *tit. Speche of the Shire, cap.* 53.

Sheriffes. CAP. 51.

Our Justice. THe *Custos Rotul.* or the eldest Justice of the *Quorum* (in his absence) ought at the general Sessions after *Michaelmas*, to appoint two Iustices of the peace (the one being of the *Quorum*) to have the oversight & controlment of the Sheriffe, under-Sheriffe, and other their Officers and Deputies, and the inspection and examination of their books and amerciaments, and for making of Estreats, &c. in their County Courts. 11. H. 7. 13. P. 26. H. 8.

Also

Also either of those two Justices of Peace, or any other Iustice of Peace, (as it seemeth by the words of the Statute) upon complaint of the partie grieved, may examine the Sheriffe, Under-sheriffe, Shire-clearke, and plaintifes, concerning the taking, or entring of plaints in their said Countie-courts, and bookes against the Statute: *viz.*

1 If any plaints shall be entred in their bookes, in any mans name, unlesse the partie plaintife bee either present in Court in Person, or by a sufficient Attorney or Deputie, that is knowne to bee of good name and behaviour.

2 If that the plaintife finde not pledges to pursue his said plaint (*scz.* such persons as are knowne in that Countie.)

3 If the plaintife shall enter more than one plaint, for one trespasse, contract or cause.

4 If the Sheriffe, undersheriffe, &c. shall enter, or cause to bee entred any moe plaints than the plaintife supposeth he hath cause of Action for against the defendant.

And if the said Iustices, or Justice of Peace upon his or their examination, shall finde any such default in the said Sheriffe, Vnder-sheriffe, or Clearke, that shall stand for a sufficient conviction, without any further inquirie, or examination; and they shall forfeit upon the same examination, forty shillings to the King for every default (the same to be recovered in the Exchequer.) And the same Iustice or Iustices that so shall take the examination, shall certifie the said examination into the Exchequer within a quarter of a yeere, upon paine of xl. s.

Also the said Iustice of Peace may examine the defaults of the Bailiffe of the hundred, for not warning of the defendants (in such plaints) to appeare according to his precepts received from the Sheriffe or under-sheriffe. And if upon examination, the Iustice shall finde any default in such Bailiffe, in not warning the defendant to appeare, or otherwise in not executing their said office, that shall stand for a sufficient conviction, and the said Bailiffe thereupon shall forfeite to the King for every such default xl. s. the same examinations to bee certified into the Exchequer as aforesaid.

Two Iustices.

Sheriffes, &c. shall make no estreats to levie their Shire amerciaments, untill the said two Iustices (appointed at the generall Sessions as aforesaid) have had the view and oversight of their Bookes: And their estreats shall bee made by Indentures (or shall bee indented) between the said Iustices, and the Sheriffe, and under-Sheriffe, and sealed with their seales, and the one part to remaine with the said Iustices, and the other part with the Sheriffe, for to bee his Warrant to levie the amerciaments by.

The Bailiffes, &c. Collectors of the said amerciaments shall be sworne by the said Iustices, that they shall not take more mony than is forfeited and contained in their said estreats, sealed by the Iustices aforesaid.

Also the said Iustices of Peace, or one of them, may examine the defaults of the said Collectors, Bailiffes, and other gatherers of the Sheriffes amerciaments; whether they have taken or gathered any more money than is forfeited and contained in their estreats, sealed with the

One Iust.

ſeales of two Iuſtices of Peace as aforeſaid: And if upon examination the Iuſtices, or Iuſtice ſhall finde any ſuch default, That alſo without further inquirie ſhall ſtand for a ſufficient conviction; And the ſaid Collectors, Bailiffes, or other gatherers of ſuch amerciaments, thereupon ſhall forfeit to the King for every default xlli. The ſaid examination alſo, whether it bee by one or two Iuſtices, is to bee certified into the Exchequer as aforeſaid.

Two Iuſt. Alſo the ſaid Iuſtices of Peace upon ſuggeſtion or information of the partie grieved, ſhall make like proceſſe, as in an action of treſpaſſe againſt the ſaid Sheriffe, under-ſheriffe, or other their officers, offending in any the particulars aforeſaid, for to appeare before them to anſwere the ſaid ſuggeſtion or information. See what the proceſſe is in the title *Proceſſe, cap.* 132. 11.H.7.13. P.20. Lamb.349.

The *Cuſtos Rotulorum*, or any two Iuſtices of the Peace, the one being of the *Quorum, ex officio*, and without any Commiſſion to that purpoſe to them to bee directed, may take the Oaths of the under-ſheriffe of their Countie, his Bailiffes, Deputies, Clearks, and other Officers, before they ſhall exerciſe their ſaid Offices, *ſcil.* 27.H.8. P.32.33.

§ The Oath of the Supremacie.

§ The Oath for the true exerciſing their office.

See the forme of this laſt Oath, Stat. 27. *El. P.* 32. 27.El.8.

But ſpeciall Bailiffes made for the ſerving of proceſſe, are not to bee ſworne by this Statute, as M. *Crompton* reporteth, and ſaith, That it was ſo adjudged in the Kings Bench: And yet the words of the Statute bee, That every perſon which ſhall have authoritie, or take upon him to intermeddle with execution of proceſſe, &c. ſhall receive and take the ſaid Oaths, *Cromp.* 76. & 103.

Souldier. CAP. 52.

One Iuſtice. EVery Iuſtice of Peace of the Countie where any Souldier, which hath ſerved the King in his wars, ſhall bee found, which hath ſold, given, purloyned, or put away, &c. any horſe or harneſſe, wherewith he was ſet forth, or which was after appointed to him by the Lieutenant or Captaine, &c. upon complaint and due proofe of the offence to be made by the owner, his Executors, or Adminiſtrators, to any ſuch Iuſtice, ſhall by the ſaid Iuſtice be committed to ward, there to remain without baile untill he hath ſatisfied the partie grieved, his Executors, or Adminiſtrators, for ſuch horſe or harneſſe, &c. unleſſe hee due bring with him before the ſame Iuſtice ſufficient teſtimony from his Captaine, &c. in writing under their ſeale, teſtifying that the ſaid horſe or harneſſe, &c. was loſt in the Kings ſervice againſt the will of that ſouldier: or was taken by his Captaine, &c. from him, and appointed to ſome other to ſerve withall (except the ſame ſouldier were impriſoned for the ſame offence before, by his Lieutenant or Captaine, &c. and made reſtitution.) Cromp. 2 Ed.6.1. P.148.

The next Iuſtice of peace to the place of landing of any poor ſouldier, mariner, or ſea-faring man ſuffering ſhipwracke, may make them a licence to paſſe to the place where they are to repaire, &c. See hereof in the title *Vagues*. 39.El.4.

In

43. Eliz. 2. 1. Cap. 17.

In default of the Parishioners, Church-wardens, and Constables (that shall not assesse the tax imposed upon the Parishioners by the Iustices at their Easter Sessions, towards the relieſe of disabled Souldiers and Mariners) any Iustice of peace dwelling in that Parish, or (if none dwell there) in the parts next adjoyning, may assesse the same; and the same Iustice of Peace may also in default of the Church-wardens and Constables, levie the same by distresse and sale of the goods of the partie so refusing or neglecting, rendring to the partie the overplus, &c.

39. Eliz. 17. 1. Mar. 8.

If any poore souldier or mariner, comming from, or beyond the seas, shall repaire to his place of birth, &c. and cannot there get worke, then upon his complaint, any two Iustices of Peace neere the said place, shall take order (by their discretion) to set him to worke; and for want of worke, the said Iustices shall tax the whole Hundred (by their discretion) for his relieſe, till sufficient worke may be had. *Two Iustices.*

Stocke of the Shire. CAP. 53.

One Iustice. To what vses they may be imployed.

IN the default of the Parishioners, Church-wardens, and Constables (that shall not assesse the tax imposed upon the Parishioners by the Iustices at their Easter Sessions, towards the relieſe of the prisoners in the Kings Bench and Marshalsey, and of the Hospitals of that Countie, and of the losses by fire, water, and other casualties, & relieſe of the poore within that Countie,) any Iustice of peace dwelling in that Parish, or (if none dwell there) in the parts next adjoyning, may assesse the same: And the same Iustice, or any other Iustice of Peace of that limit (in the default of the Church-wardens, and Constables) may levie the same by distresse and sale of the goods of the party refusing or neglecting to pay his part thereof, rendring to the partie the overplus: And in default of such distresse, any Iustice of P. of that limit may commit such person to prison, there to remaine without baile, till he hath payed the same.

43. Eliz. 2. 9. Pocet. 33.

Also in default of the Parishioners, Church-wardens, and Constables (that shall not assesse the tax imposed upon the Parishioners, by the Iustices at their Easter Sessions, towards the relieſe of maimed Souldiers and Mariners) any Iustice of Peace dwelling in that Parish, or (if none dwell there) in the parts next adjoyning, may assesse the same: And the same Iustice of Peace (in default of the Church-wardens and Constables) may levie the same by distresse and sale of the goods of the partie refusing or neglecting to pay his part thereof, rendring to the partie the overplus. But in default of such distresse the Iustices of Peace may not commit such person to prison, as he might in the former case. 43. *Eliz.* reg. 3. *P. Capeaine* 11.

Now in these, and other rates and taxations, you shall observe these rules following.

1. First, that the most reasonable rating of land, is by the yearely value, and qualitie thereof, and not by the quantitie of content.

2. Hee that occupieth (in his owne hands) lands lying in severall Parishes, shall be charged in every Parish proportionably for his lands there.

3 The Farmour ſhall be rated for the lands, and not the Leſſor, or Land-lord. Co. 5. 63.

4 A man (ſc. the Land-lord) ſhall not be rated or taxed for his Farme rents, in as much as the Farmour or occupier of the land is chargeable for the ſame land. So where my Farmour is aſſeſſed by his goods, I ought not to be aſſeſſed for my rent of the ſaid farme. *Br. Quinz.* 2. 4. 7. *Hen.* 4. 33. & 11. *Hen.* 4. 35. Co. Ibid.

5 By goods in moſt caſes a man may be rated (as well as by lands) but not both by goods and lands, as it ſeemeth.

The like you may ſee in divers acts of Subſidies, wherein there is uſually a ſpeciall Proviſo, that no perſon ſhall be taxed both for his lands and goods, nor double rated: ſee the acts of Subſidies, *Anno* 7. 18. & 21. *Iacobi Regis*, & *Annis* 27. 29. 31. 35. 39. & 43. *Elizab.* 11. & 4. *Caroli. Reg.* and yet ſee 44. *E.* 3. *Br. Cuſtomes* 6. where a tax of ten pounds was made by the Pariſhioners for the amendings of their Church, and was taxed to be levied of every plow-land ſix pence, and of every Cow one penie, and of every ten ſheepe ob. and I. S. for his land, cowes and ſheep, was rated at ix. s. and was diſtrained for the ſame, and upon a Replevin by I. S. ſued, no Exception was taken to the manner of rate impoſed upon I. S. But note that the ſaid tax was made by his conſent, *Et omnis conſenſus tollit errorem.* Co. 5. 36. & 40.

So then he that hath both lands and goods ſhall be charged by the beſt (of them both) but he is not to be double charged, *ſc.* by the one and the other: and yet in ſome places they doe uſe to charge one perſon both by lands and goods: which if it be warrantable by Law, yet it ſeemeth to be with this difference, *ſc.* That where a man occupieth land, and alſo hath in his hands a great eſtate or ſtocke of Merchandiſe, or be alſo a Clothier, Maultſter, or the like, that ſuch perſon peradventure may be charged by his lands, and alſo by ſuch his ſtockes; but for ſuch goods or ſtocke of Cattell whereby a man doth occupie, compaſſe, or manure his lands (as for horſes, ſheepe, kine, &c. wherewith he ſtocketh his land) a man ſhall not be charged: *ſc.* if he be charged by his land, he ſhall not alſo be charged for ſuch his cattell which doe manure the ſame land.

Alſo where a man is rated by his goods, it ſeemeth reaſonable that ſuch goods be rated after the value of lands to be purchaſed: *ſc.* One hundred pounds in ſtocke or goods, to be rated after 5. or 6. li. *per annum* in lands. And ſo after the like proportion for a greater or leſſer eſtate in goods, ſtocke, merchandiſe, or the like.

Note, where a man is charged by goods, they muſt be *bona notabilia*, as it ſeemeth: And yet to the Subſidie, men are rated not onely by their ſtocke of merchandiſe or cattell, corne, houſhold-ſtuffe, and other movable goods which are *Notabilia*, but alſo by their coine, and debts owing to them (deducting ſuch debts as they owe to others, and ſuch debts as be deſperate.) But there the partie over-rated, upon his complaint to the Commiſſioners, and his oath taken before them, that his goods, coyne, or debts, be not of ſuch value (which oath the ſaid Commiſſioners are authorized to take by the Statutes) the ſaid Commiſſioners may

abate the ſaid aſſeſſements, according as upon ſuch examination ſhall appeare to them juſt. See the afore-recited Acts of Subſidies.

Alſo for goods, a man ſhall be charged only in that Towne where the goods be at the time of the aſſeſſement. *Br. Quinz.* 4. & 6. See the Statute 9. *H.*4. *cap.*7.

Alſo if a man be aſſeſſed for his goods in D. when as he hath no goods there, and be diſtrained for ſuch aſſeſſement, hee may have an Action of Treſpaſſe. *B. Quinz.* 3. & 4.

The Conſtables (or other officers) and greater part of the Pariſhioners (upon a generall warning given in the Church) aſſembled may make ſuch taxations by law. See *Coke* 5.6.7. *Fi.*49.

The like may be done by the Churchwardens, and the greater part of the Pariſhioners, for Church charges.

And if the greater part of the Pariſhioners will not meet upon ſuch warning given, it ſeemeth the officers, and ſuch of the Pariſhioners as will meet, may make ſuch taxations.

Note, that ſuch taxations being made for a Common wealth, as for the making or amending of a Bridge, Highway, Cawſey, Seabanke, or the like, they ſhall bind all perſons (although they aſſent not) 44. *Ed.*3.18. 19. *Br. Cuſtomes* 6. *Co.*5.63. *Fi.*49.

And ſo of taxations made to repaire the Church, or for other common towne charges (as it ſeemeth) where ſuch taxations are made by the greater part of the Pariſhioners, as aforeſaid. See *Co.*5.63. & 67. & 21. *H.*7. *fol.* 20. *b.* & 8. *E.*1. *Fitz. Aſſ.*413.

Alſo when aſſeſſements are made for the reparations of bridges, highwayes, ſeabankes, cawſies, and the like, it ſeemeth that the ſumme aſſeſſed upon particular men (or townes) ought to bee competent and reaſonable, having regard to the benefit which the parties aſſeſſed or charged, ſhall or may have and enjoy by reaſon of the ſaid aſſeſſement; and ſo reaſonable as that the party ſhall or may have more benefit than charge thereby; and then ſuch aſſeſſements cannot be reputed burthenſome, or a charge to the ſubject, when hee ſhall or may reape benefit thereby. See 13. *H.*4. *fol.* 14. & *Co.*5.63.

If a townſhip be amerced, and the neighbours doe (by aſſent) aſſeſſe a certaine ſumme upon every inhabitant, and doe agree that I. S. ſhall gather it up, and that if it be not paid by ſuch a day, that I. S. ſhall diſtreine for the ſame, in ſuch caſe a diſtreſſe taken by I. S. (for ſuch rates behind) is good. *Br. Cuſt.*6. *Doct. & Stud.*74. *b.*

Subſidie. Cap. 54.

IF any perſon that ought to be ſet to the Subſidie, doe by his craft or covine eſcape the taxation, and it bee proved before two Juſtices of peace of that countie: then ſhall he be charged at the double value of ſo much as he ought to have beene taxed at, and ſhall further be puniſhed at the diſcretions of the ſaid Juſtices. See 7. & 21. *Jac. Reg.* and divers former Acts of Subſidies.

Swearing. CAP. 55.

IF any perſon or perſons ſhall prophanely ſweare, or curſe, in the hearing of any Iuſtice of peace of the County, (Mayor, Bailife, or head officer of any City or towne Corporate) where ſuch offence ſhall bee committed; or ſhall be thereof convicted by the oaths of two witneſſes, or by confeſſion of the party before any ſuch Iuſtice of Peace or head Officer, &c. every ſuch offendor ſhall for every time ſo offending, forfeit and pay to the uſe of the poore of that Pariſh where the offence ſhall bee committed, the ſumme of xii.d. 21. *Iac. Regis, cap.* 20 *&* 3. *Caroli*, 4.

Everie Iuſtice of peace, and everie ſuch head Officer may miniſter the ſaid oath to everie witneſſe. 21. *Iac. cap.* 20.

Everie Iuſtice of Peace and everie ſuch head Officer, may make their warrant to the Conſtables, Church-wardens, and Overſeers of the poore of that Pariſh where the ſaid offence ſhall bee committed; and the ſaid Conſtable, Church-wardens, and Overſeers of the Poore, by vertue of that warrant may levie the ſame ſumme and ſums of money by diſtreſſe and ſale of the offendors goods, rendring to the party the overplus. *Ibid.*

In defect of ſuch diſtreſſe, the offendor (if he or ſhe be above the age of xii. yeeres) ſhall by warrant from ſuch Iuſtice of peace, or head Officer, be ſet in the Stockes by three whole houres. But if the offendor bee under the age of xii. yeeres, and ſhall not forthwith pay the ſaid ſumme of xii.d. then he or ſhe, by warrant of ſuch Iuſtice of Peace or head Officer, ſhall bee whipped by the Conſtable, or by the Parent or Maſter, in the preſence of the Conſtable. *Ibid.*

But everie offence againſt this law, ſhall be complained of, and proved as aboveſaid, within xx. dayes after the offence committed. *Ibid.*

Tranſportation. CAP. 56.

One Iuſtice. IT ſhould ſeeme by the words of the Statute, that any one Iuſtice of Peace may inquire of, heare and determine (as alſo may examine the mariners, and everie other perſon) of all and ſingular the offendors againſt the Act. 1. *&* 2. *Phil. & Mar.* provided for the reſtraining of carrying corne, beere, butter, cheeſe, herring, and wood, beyond the ſea; but *quære.* 1. & 2. P. & M. P. Inſt. 97.

Yet note that every man may tranſport Corne, it being at theſe prices following (except it be prohibited by Proclamation) *ſc.*

Wheat	the quarter	xxxii.s.
Rye		xx.s.
Barley and Mault		xvi.s.
Peaſe and Beanes		xvi.s.

21. Iac. 28. 3. Car. 4.

Alſo every man may tranſport any beere, when the price of a quarter of Mault exceedes not the ſumme of xvi.s. 3. *Iac. cap.* 11. 21. *Ia.* 28.

And it is holden to be great policie, to provide that Corne be alwaies of a reaſonable and competent value, it being an aſſured meanes to increaſe and advance Husbandry and tillage, the ancienteſt of all trades and profeſſions, and commanded by God to *Adam*, *Gen.* 3. 23. One of the greateſt commodities of this Realme, and much reſpected and favoured, as well by the common Law, as alſo by the common aſſent of the King, the

the Lords Spirituall and Temporall, and by all the Commons in many Parliaments, *Co.4.39.* See the Statutes 17.*R.2.cap.*7.4. *Hen.6 cap.*5. & 11. & 2.*P.* & *M.cap.*5.

Treſpaſſe. CAP. 57.

41.El.7. P.1. ALL and every lewd and meane perſons, which ſhall unlawfully cut or take away any Corne growing; or robbe any Orchards or gardens; or break or cut any hedge, pale, raile, or fence; or dig, pull up, or take away any fruit trees; or ſhall cut or ſpoyle any woods, underwoods, poles, or trees ſtanding (not being felonie;) And their procurers or receivers knowing the ſame, being thereof convict by confeſſion of the party, or by the teſtimony of one ſufficient witneſſe upon oath before any one Iuſtice of peace (where the offence ſhall be committed, or the offendor apprehended;) ſhall for the firſt fault give the party wronged ſuch recompence, and within ſuch time, as by any one Iuſtice of Peace (of the County where ſuch offence ſhall be done) ſhall be appointed. And if ſuch offendor ſhall be thought (in the diſcretion of the ſaid Iuſtice) not able, or doe not make ſatisfaction accordingly; then the ſaid Iuſtice ſhall commit the ſaid offendor to ſome Conſtable, or other inferiour officer (where the offence ſhall be committed, or the offendor apprehended) to be whipped *One Iuſtice.*

Alſo it ſeemeth, that for the ſecond fault, & every other offence whereof ſuch offendor ſhall be after convicted in forme aforeſaid, ſuch offendor ſhall be whipped, as aforeſaid, without any ſatisfaction to be taken. *ibid.*

P.2. If any Conſtable or inferiour officer, do refuſe, or doe not, at the commandement of the Iuſtice (by himſelfe, or ſome other by him to bee appointed) execute upon the offendor the puniſhment aforeſaid, the ſaid Iuſtice of Peace may commit ſuch Conſtable, &c. to the common Gaole, there to remaine without baile, untill the ſaid offendor bee by the ſaid Conſtable, or by ſome other by his procurement, whipped as aforeſaid.

P.3. But no Iuſtice of Peace ſhall execute this ſtatute for any of the offences aforeſaid, done unto himſelfe, unleſſe hee bee aſſociated and aſſiſted with one or more other Iuſtices of the Peace whom the offence doth not concerne.

It ſeemeth that any one Iuſtice of peace (not being the party grieved) may ſend ſuch offendors for their ſecond fault &c. to the houſe of correction, as idle & diſorderly perſons, there to be detained, &c. at the diſcretion of the ſaid Iuſtice of P. and this by force of the *ſtat.7.Iac.*4. eſpecially if they be cõmon offendors in this kind; or may bind thẽ to their good behaviour, & ſo over to the next quart. ſeſſions, & by order frõ thence, to be ſent to the houſe of correctiõ, there to be continu'd ſome convenient time.

Tythes. CAP. 58.

TWo Iuſtices of the P. (the one being of the *Quorum*) upon complaint by any competent Judge of Tythes, for any miſdemeanor of the defendant in a ſuit of Tythes, (or for other duties of the Church) may cauſe him to be attached, & cõmitted to ward, there to remain without baile, until he find ſufficient ſureties (unto the ſaid Iuſt.) by recognizance to the kings uſe, to obey the proceſſe & ſentẽce of that Iudge.

Alſo

Alſo upon complaint or certificate in writing by any Eccleſiaſticall Iudge, that hath given definitive ſentence in the caſe of Tythes againſt one which wilfully refuſeth to pay the Tythes, or ſums of money ſo adjudged, two ſuch Iuſtices of Peace may cauſe the party to be attached, and committed to the next Gaole, there to remaine without baile, till he finde ſuch ſuretie (as aforeſaid) to performe that ſentence. 32.H.8.7. P.Inſt.104.

Et ou ſi le partie diſobey tiel ſentence, il poit eſte excommenge pur tiel Contumacy, & donque ſi ceſtyiſſint excom' : ne voile per 40. jours eſte reconcile al eſgliſe, ſur Certificat fait al Roy per la Ordinarie en le Chancerie, le partie ſerra miſe en priſon tanque il voile ſatisfier leſgliſe, & ceo per un briefe de Excom' : Capienda. Fi. 141.

Tyle. CAP. 59.

IT ſeemeth by the words of the ſtatute, that any one Iuſtice of peace may enquire, heare, and determine (by examination, or otherwiſe by their diſcretion) of all and ſingular the offences committed in Tyle making, (*ſc.* if they be not made good, and of earth well prepared, and alſo of due aſſiſe in length, breadth, and thickneſſe,) and may aſſeſſe the fines limited by the ſame ſtatute: and may call before him ſuch as have beſt knowledge in Tyle making, and appoint them ſearchers of the ſaid defaults, but M^r. *Lambert*, 197. maketh a doubt thereof. 27.Ed.44. P.34. Lamb.197. Cromp.130.

Watch. CAP. 60.

EVery Iuſtice of Peace may cauſe night watch to be duly kept, for the arreſting of perſons ſuſpect, and night-walkers (be they ſtrangers, or others) that be of evill fame or behaviour: and this they may doe by force of the commiſſion, the firſt *Aſſig. Lamb.* 190. 33.Ed.1. P.2.

This watch is to be kept yearely from the feaſt of the Aſcenſion, untill Michaelmas, in every towne, and ſhall continue all the night, *ſc.* from the Sunne ſetting, to the Sunne riſing. Ibid.

All ſuch ſtrangers, or perſons ſuſpected, as ſhall in the night time paſſe by the watchmen (appointed thereto by the towne, conſtable, or other officer) may be examined by the ſaid watchmen, whence they come, and what they be, and of their buſineſſe, &c. And if they finde cauſe of ſuſpition, they ſhall ſtay them; and if ſuch perſons will not obey the arreſt of the watchmen, the ſaid watchmen ſhall levie hue and cry, that the offendors may be taken; or elſe they may juſtifie to beat them (for that they reſiſt the Peace and Iuſtice of the Realme,) and may alſo ſet them in the ſtockes (for the ſame) untill the morning; and then if no ſuſpition bee found, the ſaid perſons ſhall bee let goe and quit: But if they finde cauſe of ſuſpition, they ſhall forthwith deliver the ſaid perſons to the Sheriffe, who ſhall keepe them in priſon untill they be duly delivered; or elſe the watchmen may deliver ſuch perſons to the Conſtable, and ſo to convey them to the Iuſtice of peace, by him to be examined and to bee bound over, or committed, untill the offendors be acquitted in due manner. See more of watch in the title *Felonie, cap.* 109 *Finc.* Winch.13. E.1.cap.4. 5.E.3.14.

These watchmen are alſo to apprehend all rogues and vagabonds, night-walkers, eveſdroppers, ſcouts, and ſuch like, and ſuch as goe armed, &c.

Note

Note that in an action of false imprisonment brought by one *Sm.* against *Browne*, (a Constable of Chalmesford in Essex) these things were holden for Law concerning Watches, about 32. *Eliz.*

1 First, that no man is compellable to Watch, except he be an inhabitant within the same Towne.

2 That such as are inhabitants within the towne, are not compellable to watch at the will of the Constable, but onely when their turne commeth; and therefore *Gawdy* (Iustice) said that the Statute of Winch. 13. that from henceforth watches shall be kept as hath beene used in times past, &c. and so the manner of watching is not referred to the will of the Constable, but onely to the use heretofore, which is commonly by turne, or by the house.

3 That if a man who is compellable to watch, shall contemptuously refuse to watch upon the commandement of the Constable, the Constable *ex officio* may set him in the stockes for such his contempt: *Tamen quære de hoc.* Or else the Constable may present such his default at the Assises, or Sessions of the peace, &c. or may complaine thereof to any Iustice of peace, who may bind the offender to the good behaviour, and so over to the next Quarter Sessions, &c.

Note also that both watching, and warding, must be by men that be able of body, and sufficiently weaponed.

Watermen. CHAP. 61.

EVery Iustice of P. (as it seemeth by the generall words of the stat.) within the Shires next adjoyning to the river of Thames (between Gravelend & Windsor) within his severall jurisdiction, hath power (upon complaint made to him by the Overseers and rulers of the watermen and Wherrymen, or two of them, or by the Masters of any such servants) to examine, heare, & determine all offences against the Statute: and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this act, (if there be just cause) and also by his discretion to punish those Overseers, and Rulers, that shall unjustly punish any person, by colour of this act.

The offences of Watermen against this statute, are these:

1 No single man shall be a Waterman there unlesse he be a housekeeper, or an apprentice, or retained in service by the whole yeare. See the Stat. 1. *Iac. cap.* 16.

2 One of the (two) Watermen, rowing together in one boat, must be allowed by the most part of the eight Overseers, by writing under their seale; and must have used rowing there two yeares before.

3 Watermen shall not hide themselves in time of pressing for the Kings service, &c.

4 Watermen shall not take for their fare and labour, above the prises assessed, &c. and set up in tables in Westminster Hall, &c. But *quære* whether the Iustice of peace be to meddle in this. See the Statute at large.

Wax. CHAP. 62.

EVery Iustice of Peace may examine, and search (by his discretion) such as doe sell, or set forth to be sold, any candles or other workes of

of Wax at higher price than after the rate of iiij. d. the pound, over the common price of plaine Wax, betweene Merchant and Merchant, and may punish them by forfeiture of the worke, or value thereof, and by fine to the King.

Wine. CHAP. 63.

EVery Iustice of peace (as it seemeth by the words of the Statute) within the precinct of his office, (at the request of any subject, to whom denniall of sale shall be made of any Wine, and full payment therefore offered according to the prises set downe by the Lords, &c.) may enter into the places where such Wine shall lie, and may sell and deliver the same Wine desired to be bought, to the person requiring to buy the same, taking the Buyers money toward the satisfaction of the forfeiture, &c. 24. H. 8. 6. P. Wine 4.

Wood. CHAP. 64.

TWo Iustices of peace (not being of kindred, alliance, counsell, or fee, to the Lord or owner of a Wood) appointed by the more part of the Justices of peace at their Sessions, upon complaint of the Lord made unto them, may divide and set out the fourth part of the Wood, if the Lord and Commoners thereof (being first called before them) cannot agree upon it. 35. H. 8. 17. 13. Eliz. 16. P. 8. 9.

Weights. CHAP. 65.

Two Iustices.

TWo Justices of peace (the one being of the *Quorum*) may by examination, or enquirie, heare, and determine the faults of head Officers, in cities, boroughes, and market townes, that doe not twice every yeare view and examine all weights and measures in their townes, &c. And doe not breake and burne the defective. 11. H. 7. 6. P. Inst. 90. Lamb. 345.

Also two such Iustices may (by examination, or enquirie) heare and determine the faults of all buyers and sellers, which doe not buy and sell with weighes and measures that be lawfull, *sc.* with such as be marked and sealed, *sc.* in market townes, (or like and equall with the Kings standard, *sc.* out of market townes *quere.*) Also the said Iustices may breake and burne all defective weights and measures. See *hic postea.* Ibid. Lamb. 345. P. Weights 7

The said Iustices may fine all and every the offenders atoresaid by their discretion, & may make processe against them, as if they were indited of trespasse against the peace. For the processe, see hereof in the title, *Processe.* Ibidem & P. Inst. 92. Lamb. 315.

Now for the readier direction of the Iustice of peace herein, I thought good to set downe the just and certaine contents, of all (or most sorts of) weights and measures, that so they may the better judge what weights and measures be unlawfull, or defective, and what not.

By the Statute of *Magna Charta, cap.* 25. there shall be but one Weight and one Measure of Corne, Wine, Beere, and Ale, and one Yard, throughout the whole Realme, (*sc.* according to the Kings Standard, in the Exchequer) and this statute of *Magna Charta* hath since herein beene confirmed by many severall Parliaments, *viz.* by the statute of 14. E. 1. 12. 25. *Edw.* 3. 6. 10. 27. *Edw.* 3. 10. 34. *Edw.* 3. 5. 13. *Rich.* 2. 8. *Hen.* 9. H. 5. 6. P. Weights 1 P. 7.

8. *Hen.*6.5.7. *Hen.*7.4.11. *Hen.*7.4. & 12. *Hen.*7. 5. as thereby appeareth.

*Rast.*8. Diu. fol.527.b. And yet notwithstanding there alwayes hath beene, and still are, two kinds of weights used in England, and both warrantable: the one by law, the other by custome (as it seemeth) but they are for severall sorts of wares or commodities; for there is *Troy* weight, and *Averdepois*.

*Rast.*8. diu. fol.527.b. 1 *Troy* weight is by law, and thereby are weighed gold, silver, pearle, pretious stones, silke, electuaries, bread, wheat, and all manner of graine, or corne, is measured by *Troy* weight. And this hath to the pound xii. ounces, or xx.s. sterling weight.

2 *Averdepois* weight is by custome (yet confirmed also by Statute;) and thereby are weighed all kinde of Grocery wares, Physicall drugges, *Rast.*8.*&* 14. 37.*E.*3.c.10. Butter, Cheese, Flesh, Waxe, Pitch, Tarre, Tallow, Wools, Hemp, Flax, Yron, Steele, Lead, and all other commodities not before named (as it seemeth) but especially every thing which beareth the name of garbel, and whereof issueth a refuse or waste. See *Rast.*8. *fol.* 527. and the booke of *Assise, impress.* 1597.

And this hath to the pound xvi. ounces, or xxv.s. sterling weight.

Also in this *Averdepois* weight, unto every hundred is allowed xii. pound weight: so as 112. pounds make a hundred weight, sixe and fiftie pounds make halfe a hundred, and 28 pounds make a quarter.

27.*Ed.*3.10. Also all manner of *Averdepois* shall bee weighed by lawfull weights, sealed according to the Standard of the Exchequer, *P. Weights* 14.

Averdepois weight.

14 ounces and a halfe, and two pence weight *Troy*, doe make 16 ounces of *Averdepois*.

7 pounds, or pints, *Averdepois*, make the gallon.

14 pounds, or pints, *Averdepois*, make the pecke.

56 pounds, or pints, *Averdepois*, make the bushell.

Measures of Corne, according to *Averdepois* weight.

Troy weight.

Pints or pounds.	5120	5120	2560	640	64	16	8	4
Quarts.	2560	256	128	32	8	4	2	1
Pottles.	1280	128	64	16	4	2	1	
Gallons.	640	64	32	8	4	1		
Pecks.	320	32	16	4	2			
Bushels.	80	8	2	1				
Coombes.	20	2	1					
Quarters.	10	1						

Ten quarters of corne is a Last.

Measures of Graine, according to *Troy* weight.

Beere

	Beere meaſures.						Ale meaſures.				
Pintes.	288	144	72	8	4	2	256	128	64	8	
Quarts.	144	72	36	4	2	1	128	64	32	4	Meaſures of Beere and Ale.
Pottles.	72	36	18	2	1		64	32	16	2	
Gallons.	36	18	9	1			32	16	8	1	
Firkins.	4	2	1				4	2	1		
Kilderkins	2	1					2	1			
Barrels.	1						1				

See for Corne, Beere, and Ale, more fully in that which followeth:

Troy weight, 22. *H.* 7. 15. & 51. *H.* 3.

32 Wheat cornes taken in the midſt of the eare, weigheth 1. d. ſterling.

Twentie pence ſterling maketh the ounce Troy.

12 ounces maketh in { weight 1 l' Troy. / meaſure 1 pinte.

Two pints, or pounds, maketh the quart.

Two quarts, maketh the pottle.

8 pints, 4 quarts, 2 pottles } maketh the gallon;

Eight quarts maketh the pecke.

64 pints, 32 quarts, 8 gallons, 4 pecks } maketh the { Buſhell, or Firkin.

Sixteene gallons, Two Firkins } maketh the { Kilderkin, halfe Barrell, Rondlet.

256 pints, 128 quarts, 32 gallons, 4 firkins, 2 kilderkins, 4 buſhels } maketh the { Coombe, or Barrell.

512 pints, 256 quarts, 64 gallons, 8 firkins, 4 kilderkins, 2 barrels, 8 buſhels } maketh the { Quarter, or Hogſhead.

So

So the { Pint, and pound / Firkin, and bushell / Barrell, and coombe / Hogshead, and quarter } are of like content.

Also the Statute of 23. *H.*8. *cap.*4. doth limit the weight of every of these 3. vessels here next named, being empty, as followeth, *sc.*

1. The barrell,
2. The halfe barrell, or kilderkin,
3. The firkin,

} must weigh (being empty) { 26 / 13 / 6½ } pounds.

Measures of Corne.

All kinde of corne and graine is measured by *Troy* weight.

By Statute the bushell must containe eight gallons, or 64 pounds or pints of wheat, 31. *E.*1. 12. *H.*7. 5. *P. Weights* 2. *Rastal.* 34. *Dive.* *Bushell.*

And yet by the booke of Assise, imprinted *An. Dom.* 1597. the Bushell is to containe 56 pounds (or pints) of *Averdupois* weight (which is three pounds, or three pints and eight ounces *Troy* more than the Statute or *Troy* weight.) For 56 pounds or pints *Averdupois* weight, and 67 pounds eight ounces *Troy* weight, doe justly agree.

Also eight bushels striken, make the quarter of corne, 11. *H.*7. 4. 25. *E.* 3. 10. & 34. *E.*3. 6.

Also every measure of corne shall bee striked without heape, 25. *E.*3. 10. and all purveyances shall bee by such measure, *sc.* striked without heape. *ibid.*

Water measure, sold within Ship-board, shall containe five peckes striken, to the bushell.

No person shall buy or sell with a bushell, except it bee sealed, and marked by the Officer, and according to the Kings Standard.

But note, that in many places and countries the measure of corn doth much differ, and the bushell in one place is greater than in another.

And yet in the measure of corne *Consuetudo loci est observanda*, if it be a custome exceeding all memory, and used without any lawfull interruption; for such time and usage sufficeth for a Law, though regularly Custome or prescription against a Statute is not good, except that such customs and prescriptions be also confirmed by Statute or that they be sav'd by another Statute. See *Br. Prescr.* 50. *Pl.* 36. *b.* & 8. *E.*7. *fol.* 4. *b.* 10. *Co. Stud.* 147.

But this difference of measure of corne, should seeme to come partly from the diversitie of Clearks of the Markets, (there being a Clearke of the Market for the Kings house, another for the Prince, another for the Duchie, others in corporate townes, and others belonging to Lords of liberties) and partly from the abuse of divers corporate townes, and other priviledged places, or liberties, where they by usurped custome (without any good warrant of law) have used to have and to buy by such measures. And where the Clearke of the Market for the K. hath forborne or neglected to meddle, in regard perhaps of their corporation, liberty, or some other respect. But this abuse two Iustices of Peace (the one being of the *Quorum*) may reforme: *sc.* two Iustices of Peace of the County, where there be no Iustices of Peace within that Corporation, &c.

Alſo the Clarke of the market for the Kings houſe, may reforme this in all places within the Verge, 27. *H.* 8. *cap.* 24.

And yet by the words of the Statutes of 25. *E.* 3. *cap.* 10. & 34. *E.* 3. *c.* 6. the rents and farmes of Lords, ſhall bee meaſured by ſuch meaſures as they were wont to bee, whether it were by heaped meaſure or greater meaſure than the Statute appointeth.

And note that the Clarke of the market ſhall carry with him all his weights and meaſures ſigned according to the Standard of the Exchequer, 16. *Rich.* 2. *cap.* 3. And the Iuſtices of Peace may, yea ought for to ſit with the Clarke of the market, at his comming into the Country, &c.

Sir *Francis Harvie* hath often delivered in his charge at Cambridge Aſſiſes, theſe directions: *ſc.* That one Iuſtice of Peace at the leaſt, ought to ſit with the Clarke of the market, to ſee that the Kings ſubjects bee not wronged. And that the Clarke of the market ought to have with him his directions out of the Exchequer. And that he may take no mony for any Bills, &c. And that hee ought to ſeale no buſhell, or other meaſures or weights, but once (and not yeerely as they uſe to doe:) And that if after the firſt ſealing hee ſhall take any thing for the ſealing thereof againe, or for the ſhewing thereof, &c. it is Extortion, yea it is one of the greateſt oppreſſions (ſaid hee) for that it concerneth almoſt all men.

Bread. For the Aſſiſe of bread, I refer you to the bookes made for the Aſſiſe thereof, and will onely ſet you downe ſome ſhort obſervations therein.

1 All ſorts of bread ought to be weighed by *Troy* weight.

2 *Poſt ſeptem dies, panis non ponderetur.*

3 The Bakers ſhall not ſell to any victualler, &c. to bee retailed, but onely thirteene peniworth for twelve pence, as well mans bread, as horſe-bread.

4 Every Baker ſhall have a marke of his owne, for his bread. *Poulſ. Stat. at large, p.* 111. & *Raſt. weights* 7.

5 Every ſort of bread ſhall be weighed according to the price of the middle ſort of corne.

6 No man ſhall bee a common Baker, except that he hath beene an Apprentice to that trade by the ſpace of 7 yeers at the leaſt.

7 The Statute doth appoint three ſorts of bread to be made and ſold to the ſubjects: *viz.* white bread, wheaton, and Houſhold bread, beſides the horſe-bread.

8 The Bakers of Cities, Boroughs, and Corporate Towns, ſhall have vi. s. allowance for the baking of every quarter of wheat, over and above the ſecond price of wheat in the market.

9 Bakers inhabiting out of Cities, Boroughs, and Corporate Towns, ſhall have iiii. s. in allowance for their charges in baking of every quarter, &c.

10 But Forreiners bread ſhould weigh 6 ounces in the pennie loafe, more than the towne dwellers, for that they beare not ſuch ſcot and lot as the others doe.

11 Laſtly, for horſe-bread, that three horſe-loaves bee ſold by the Baker for a pennie, xiij. d. for xli. and every loafe to weigh the full weight

of a penny white loafe, at what price ſoever the wheat bee ſold.

For the puniſhment of the Bakers for their unlawfull bread, *quare* whether they ſhall onely be amerced, &c. after indictment and conviction of their ſaid offence; or that the Iuſtices of Peace (or Iworne Officers in Leets) may take away their unlawfull bread, and give it among the poor, as Officers in corporate townes are enabled or appointed to doe, in the end of the booke of aſſiſe imprinted *Anno* 1597. And all Iuſtices of peace are there willed and required to be aiding and aſſiſting to the ſaid Officers therein. But by the Statute 51. *Hen.* 3. & 13. *R.* 2. 8. Bakers and Brewers being convict for not obſerving the aſſiſe, the firſt, ſecond, and third time, they ſhall be amerced according to the offence (if it bee not grievous.) But if the offence bee grievous or often, then ſhall they ſuffer puniſhment of the body without redemption (or remitting of the offence either for gold or ſilver) *ſc.* a Baker to the Pillorie, and the Brewer to the Tumbrell (now called the Cucking-ſtoole, as it ſeemeth by Maſter *Lambt.* 62.) or to ſome other correction. See another Statute concerning Bakers and Brewers, and their puniſhments, and to the ſame effect, made *incerti tempore, cap.* 2. & *cap.* 6. *Pulton's Statutes at large, fol.* 111.

Note, that within every Leet or market there ought to be a Pillory and a Tumbrell, to puniſh the Bakers and Brewers that offend, &c. *Fitz. Leet.* 12. And for want thereof the Lord of ſuch Leet, or Market, ſhall make a fine to the King, *Cro.* 149.

Alſo they which have the keeping and correction of the aſſiſe of Bread and Beere, if they have not a Pillory, and a Tumbrell to puniſh Bakers and Brewers that are faulty, they ſhall forfeit their Franchiſe. *Cro.* 148.

Alſo a Leet may bee ſeiſed into the Kings hands, if the Steward there ſhall take mony to ſpare the puniſhment of the Tumbrell, where one ſhall offend in the aſſiſe of bread or ale, *Libr. Intr. Cromp.* 181.

The Millers Toll-diſh alſo muſt be according to the Standard. *Millers.*

Now Millers are to take for the toll but the twentieth part, or 24. part, according to the ſtrength of their water, and cuſtome of the Realm, Statute, 3. *E.* 1. *de vicluſariis. Raſt sit weights. Dia.* 7.

And yet in ſome places the Millers doe claime and take the 16 part; and where the cuſtome hath beene ſo uſed time out of minde, it ſeemeth good and warrantable; *tamen quare.*

But the Miller ought to take but one quart for grinding of one buſhell of hard corne; and if he fetch and carry backe the grift to the owner, he may take two quarts of hard corne; and this hard corne is intended of Wheat, Rye, and Meſlin (which is Wheat and Rye mixed.) And for Mault, the Miller ſhall take but halfe ſo much toll, as he taketh for hard corne, (*ſc.* one pint in the buſhell) for that Mault is more eaſily grownd than Wheat, or Rye: but if the Miller doe fetch to his Mill, and carry backe the Mault to the owners houſe, then the Miller alſo ſhall have double toll. See *Cromp. author des Courts*, 221. & 224.

Note that Millers are not to be common buyers of any Corne, to ſell the ſame againe, either in corne or meale: But ought onely to ſerve for the grinding of corne that ſhall be brought to their Mills.

Measures of Wine, Beere, and Ale, &c. 23. H.6.17. P. Wine.13. 2.R.3.13.

Wine, Oyle, and Honey, their measure is all one, *ſc.* the

Rondler,	16. & di.	
Barrell,	32. & di.	
Hogſhead,	63.	gallons.
Pipe,	126.	
Tunne,	252.	

Yet for honey the Aſſiſe is alwaies 32. wine gallons the barrell, 16. gallons the kilderkin, &c. 23. *El.* 8. *P. Wax.* 6.

Beere, the meaſure thereof, is as followeth, *ſc.* the

Firkin,	9.	
Kilderkin,	18.	gallons.
Barrell,	36.	

23. H. 8. 4. P. Coop. 2.

And ſo Beere meaſure containeth in the barrell foure gallons more than Wine, or any other veſſell.

Ale, the meaſure thereof is as followeth, *ſc.* the

Firkin,	8.	
Kilderkin,	16.	gallons.
Barrell,	32.	

No Cooper ſhall make any other veſſell for Beere or Ale, to bee ſold, within this Realme, of any greater, or leſſer number of gallons than is aforeſaid, unleſſe he ſhall cauſe to be marked upon every ſuch veſſell, (of greater, or leſſer number of gallons) the true and certaine number how many gallons every ſuch other veſſell ſhall containe. 23. *H.* 8 *ſ.* 4.

Alſo no brewer of Beere or Ale, ſhall put the Beere or Ale to ſale, to be ſpent within this Realme, in any other Barrels, Kilderkins, Firkins, or other veſſels of wood, other than ſhall bee marked by a Cooper, and wherof every veſſell ſhall contain and hold the number of gallons aboveſaid, of full and juſt meaſure, or above, and not under that meaſure, *ibid.*

The Wardens of Coppers in all Cities, and Boroughs, where there be ſuch Wardens, and in all other Boroughs and Townes, the Major, Sheriffes, Bailiffes, Conſtables, or other head Officers, may ſearch and gage all ſuch veſſels, (made in ſuch Citie or Towne) whether they beare their true contents, as aforeſaid; and if they finde any veſſell defective, they may make or amend the ſame according to the true content, or elſe may cauſe the ſame to be burned. *ibid.*

It appeareth by *M. Cromp.* that it was agreed by the Iuſtices, that the meaſure of Wine and Ale ſhould bee all one: but now by the Statute of 1. *Iac. c.* 9. Ale and Beere ſhall be ſold by retaile by one and the ſame meaſure, *ſc.* by the Ale quart. Crom. 94. b. P. Aleb. 7.

And for the prices of all veſſels of Ale and Beere, by the Statute 23. *H.* 8. *cap.* 4. any two Iuſtices of Peace might aſſeſſe the prices thereof. And that no Brewer ſhall take for any Barrell, Kilderkin or Firkin, &c. of Ale or Beere, but after ſuch prices and rates as ſhall be aſſeſſed by the ſaid Iuſtices of Peace in the Country, or by the Major or their head Officers in corporate Townes, &c. But now by the Statute 8. *Eliz. cap.* 9. the aſſeſſement of the prices thereof by the Iuſtices, ſhall be by the Iuſtices or the moe part of them being preſent at the Eaſter quarter Seſſions, and onely of ſuch veſſels as ſhall bee made or ſold out of Cities or Corporate Townes.

Sope

13. H. 8. 4. p. Sope 1. Sope, the barrell, halfe barrell, and firkin, ſhall be of the ſame content that ale is, *ſc.* the barrell 32 gallons or above, and the emptie veſſell not to be in weight above 26 pound, the emptie firkin not to weigh above 6 pound and an halfe; and to containe 8 gallons or above of full and juſt meaſure. *Sope.*

Butter alſo ſhall be of the ſame meaſure that Sope is of. *Butter.*

7. weighes 6. Cheeſe; A weigh of cheeſe muſt containe 32 cloves, and every clove 8. l. of averdepois weight: although the ſtatute 9. H. 6. 8 *Raſt.* 28. *tit.* and the booke of aſſiſe imprinted 1597. ſeeme to make 7. l. to be a clove. And yet by the booke of aſſiſe, the weigh of Suff. cheeſe muſt containe 256 l. or 12 ſcore and 16 pound of averdepois weight: (and their barrell of butter is of like weight with the foiſt:) But the weigh of Eſſex cheeſe or butter, is 300. l. weight, after the tare of five ſcore and xii. li. to the hundred, which is 336. l. or 16. ſcore and 16. pounds, of averdepois weight. *Cheeſe.*

Beeſe and other fleſh are 16. ounces averdepois to the pound, and 8 of them pounds to make the ſtone; except where the uſage of the Countrie require more pounds to the ſtone, *Booke of Aſſiſe.* *Fleſh.*

Herring, the barrell, halfe barrell, and firkin, ſhall be the ſame content that ale is, *ſc.* the barrell 32 gallons, &c. 11. *H.* 7. *c.* 23. & 13. *El.* 11. *Fiſh.* *Fiſh 9.*

Alſo Herrings are ſold by tale, *ſc.* ſix ſcore herrings ſhall goe to the hundred, ten hundred to the thouſand, and ten thouſand to the Laſt, 31. *E.* 3. *cap.* 2.

Salmon and Eeles: ſee the contents of their veſſels, *Stat.* 11. *H.* 7. *cap.* 23. *Fiſh.* *Fiſh 8. 10.*

15. E. 3. 9. Wooll, 14 li. weight goeth to the ſtone of wooll, 28 pounds goeth to the Tod, and 26 ſtone goeth to the Sack, 11 *H.* 7. 4. *P.* 3. 31. *Ed.* 3. 49. 8. *Wooll.*

Hemp, 20. li. weight maketh the ſtone, *P. Cables* 2. 21. *H.* 8. *cap.* 12.

Sugar, ſpices, and wax, 8 li. maketh the ſtone: and 13 ſtone and halfe, or 108. li. maketh the hundred: ſee the Stat. *de Compoſit. ponder. Raſt. Weights* 8.

Hops, five ſcore and twelve pounds maketh the hundred.

Lead, the content of the pound, the ſtone, and the load: ſee *Raſtall, Weights* 8.

Leather, the content of the dicker, and the laſt: ſee *Raſt. Weights,* 8.

The contents of yron, gliſſe, linnen cloth, and divers other things: ſee the ſtat. *de Compoſit. ponder. Raſt.* 8.

All other commodities of tale, or number, are ſold by the hundred, whereof
- Catrell, and fiſh, are ſold ſix ſcore to the hundred: and yet the hundred of hard fiſh muſt containe eight ſcore, *Raſt.* 8.
- Alſo all other headed things, as nailes, pins, &c. are ſold ſix ſcore to the hundred.
- All other things have but five ſcore to the hundred.

For the aſſiſe of fuell, *ſc.* of cole, ſalmood, billet, and fagot, ſee the ſtat. of 7. *E.* 6. 7. 43. *El.* 14. A ſacke of cokes is foure buſhels. *Fuell.*

Timber well hewen, and perfectly ſquared, fifteene foot thereof maketh the load.

Lath shall containe in length 5 foote, in breadth two inches, and in thicknesse halfe an inch.

Tyle, six score goe to the hundred: as for the assise thereof, (*sc.* the length, breadth, & thicknesse therof.) See the stat. 17. *Ed.* 4. *c.* 17. *P. Tyle* 2.

A bale of paper, is ten reame; a reame is twenty quires; a quire is 25 sheetes.

A roule of parchment is five dozen, or sixtie skins.

Measures of Length. *Inch.* Three barley cornes measured from end to end (or foure in thicknesse) maketh one inch.

Handfull. Foure inches maketh an handfull, 27. *H.* 8. 6. P. weights.

Foot. Twelve inches make a foot.

Yard. Three foot make a yard.

Ell. Three foot and nine inches make an Ell.

Pace. Five foot doe make a Geometricall Pace.

Fadome. Seven foot maketh a fadome.

Pole. Five yards and an halfe (which is 16 foot and an halfe) maketh a pole, rood, or pearch, *ibid.*

And yet by the usage of many Countries, the pole doth vary; for in some places it is 18 foot, and in some places 21 foot, and in other places 24 foot goeth to the pole: and there if a man shall sell a certaine number of acres of wood, &c. it shall be measured according to the usage of the Countrey there, and not according to this statute; for herein *Consuetudo loci est observanda.* See *Cromp. des courts. fol.* 223. & 222. Co. c. 47. 27. H. 3. f. 11.

The same reason may seeme to hold of measures of corne by the bushell, see a little before.

Master *Osborne* writeth that the measure of 18 foot to the pearch (or pole) is commonly cald woodland measure: 21 foot to the pole is called Church-measure, (*sc.* of land which now doth, or formerly did belong to the Church;) and 24 foot to the pole is called (and that rightly) Forrest measure.

Note that the Clerke of the Market may enquire of the pole, or pearch whereby land is measured, as well as of other measures. *Cromp. Auth. des Cours.* 221. but the Iustices of Peace are not to meddle therewith, especially out of their Sessions.

Also note that no measure shall be sealed but the bushell, halfe bushell, peck, gallon, pottle, quart, and pinte, *Cromp. fol.* 222. *tamen quære.*

Furlong. Fortie pole in length maketh a furlong.

Mile. Eight furlongs (or 320 pole) maketh an English mile. 35. Eliz. cap.

Note that our English mile containes 280 foot more than the Italian mile, the Italian mile being of 1000 paces, and five foot to a pace, and so the Italian mile is in length 5000 foot, whereas the English mile is 5280 foot in length, 1760. yards.

Acre. Fortie pole in length, and foure in breadth (or 160 pole) doe make an acre, *Stat. Compositionum & Stat.* 34. *Ed.* 1. P. weights.

Plow-land. And (by the opinions of M. *Cambden fol.* 339. and *Hollingshed, p.* 13. *impress.* 1586) one hundred acres is an hide of land; but yet it seemeth that a hide of land (or plow-land, or carve of land, which are all one) are not of any certaine content, See hereof before, *tit. High-wayes.* Co. 2. Inst.

A yard-land containeth in ſome places more, in ſome other leſſe.

And yet M. *Norden* in his ſurveyors Dialogue, *pag.* 59. ſaith, That every plow-land containeth commonly 120 acres: and that every plow-land is foure yard-land (in latine called *quatrona terra*) every yard-land containeth thirtie acres: And yet after ſome computation, every yard-land containeth but 24 acres: and this is the common account with us on the Eaſt part of Cambridge-ſhire.

Now that I have ſet you downe the contents of moſt weights and
11. H. 4. 12. H. 7. 5. p. 7. meaſures, you muſt further obſerve:

Firſt, that in every Countie (*ſc.* in the principall or ſhire towne there) there are (or ought to be) ſtandards of braſſe for weights and meaſures, (*ſc.* for the buſhell and gallon) according to the Kings ſtandard of his Exchequer, there to remaine with the chiefe officers of the ſame towne; according to which, every citie, borough, and market towne within the ſame countie, ought to make them common weights and meaſures, to be marked by him that keepeth the ſtandard.

11. H. 6. 8. 1. H. 6. 3. p. 7. 11. Alſo in every citie, borough, and market towne, there ought to be a common ballance, and a common buſhell, and weights ſealed, and according to the ſtandard in their Shire towne (as aforeſaid,) upon paine to every citie x. li. to every borough 5. li. and to every market towne xl. s. for their defaults.

11. H. 7. 4. p. 8. 27. Alſo no man within any citie or market-towne, ought to buy or ſell with any weights or meaſures, except they be ſealed and marked in forme aforeſaid (*ſc.* according to the Kings ſtandard, and by the officers in whoſe poſſeſſion the Kings ſtandard remaineth:) nor any other perſon out of a market-towne, except their weights and meaſures be like and equall with the ſtandard. See *Raſt. fol.* 531. *ca. dic.* 33.

See Ra. dic. 3. 15. 26. 29. 33. 9. H. 5. c. 10 1. H. 6. ca. 5. 17. R. 2. 9. And yet it ſeemeth by the ſtatutes 31. *Ed.* 1. & 8. *H.* 6. 5. (*Raſt. dic.* 31 & 26.) that no man (though out of a market-towne) ſhall uſe weights or meaſures, nor other thing in the place of weight or meaſure, that is not ſealed, according to the Kings ſtandard, upon paine to forfeit the value of the goods weighed or meaſured, and two yeares impriſonment, and to be fined and ranſomed, and yeeld *quatreble* damages. See *Raſt. tit. weights, & Cromp.* 94. *& ſtat. incerti temporis, ca.* 8. *Poulton, ſtat.* at large *pag.* 112.

11. H. 7. 4. b. 4. The officer that keepeth the ſtandard (in the ſhire towne) ſhall marke and ſeale other weights and meaſures, to all other the Kings ſubjects that ſhall require it, and they ſhall take for the marking of the buſhell but 1. d. and for all other meaſures but an halfe-penie; and for weights, for every hundred weight 1. d. and for halfe an hundred weight an halfe-penie, and for every weight under, but a farthing.

Now

Now follow the names of the principall Townes (in every Shire (or Countie) appointed to have the *keeping of Standards for the weights and measures, according to these Statutes.*

Bedfordshire, towne of Bedford.
Barksh. the towne of Reading.
Bristoll, the same towne.
Buck. the towne of Buckingham.
Camb. the Universitie of Camb.
Chesh. the Citie of Chester.
Cornw. the towne of Lustudiel.
Cumber. the Citie of Carliel.
Derb. the towne of Derby.
Devon. the citie of Excester.
Dors. the towne of Dotchester.
Essex, the towne of Chelmesford.
Glot. the towne of Gloucester.
Hampsh. the citie of Winchester.
Hertf. the towne of Hertford.
Heref. the towne of Hereford.
Hunt. the towne of Huntingdon.
Kent, the towne of Maidstone.
Lanc. the towne of Lancaster.
Leic. the towne of Leicester.
Linc. the citie of Lincolne.
London, the same citie.
Middl. the citie of Westminster.
Norff. the citie of Norwich.
Nor. the towne of Northampton.
Northu. the towne of New-castle
Notting. the towne of Nottingh.
Oxford, the Universitie of Oxford
Rutl. the towne of Uppingham.
Shropsh. the town of Shrewsbury.
Sink-Ports, the Castle of Dover.
Staff. the towne of Stafford.
Somers. the towne of Ilchester.
Southampton, the same towne.
Suff. S. *Edmonds* Burie.
Surr. the towne of Guilford.
Sussex, the towne of Lewes.
War. the towne of Coventrie.
Westmor. the towne of Appulbie,
Wiltsh. the citie of Salisburie.
Worc. the citie of Worcester.
Yorksh. the citie of Yorke.
Stat. 11. *H.* 7. *cap.* 4.

LEVIT. 19. 35, 36.

Ye shall not doe unjustly in judgement, in line, in weight, or in measure: ye shall have just ballances, and true weights.

PROV. 11. 1. & 20. 20.

False Ballances, or divers Measures, are all an abomination unto the Lord.

Here

Here also I will give a short view of such particular and *private Statutes (made onely for some particular Shires,* Cities or Townes) as doe give some power also unto two (or moe) Iustices of Peace *out of their Sessions.*

Cap. 66.

For paving of Aldgate street, 13. *El.* 23. & 23. *Eliz.* 12. *Aldgat.*
For repairing of Cardiffe Bridge, 23. *El.* 11. *Cardiff.*
For Iustices of Peace in Cheshire, &c. 27. *H.* 8. 5. *Cheshire.*
For repairing of Chepstow Bridge, 3. *Iac.* 23. *Chepstow.*
For Chichester Haven, 27. *El.* 22. *Chichester.*
For paving Drurie Lane neere London, 3. *Iac.* 22. *London.*
See more here before, *titulo London.*
For repairing the high-way at Non-such 3. *Iac.* 19. *Non-such.*
For recovery of marsh ground in Norff. and Suff. 7. *Iac.* 20. *Norfolke. Suffolke.*
For making Coverlet, and Dornicks there, 5. *Ed.* 6. 24. *Norwich.*
For Recognisances to bee taken of Lessees in Northumberland 11. *H.* 7. 9. *Northumb.*
For amending Bridges within five miles thereof, 18. *El.* 20.
For making the river of Thames navigable to Oxford, &c. 21. *Iac.* 32. *Oxford.*
For repairing a Ferry in the Isle of Shepey: See 18. *El.* 10. & 27. *Eliz.* 26. *Shepey.*
For laying out new High-wayes in Sussex and Kent, 14. *H.* 8. 6. 26. *H.* 8. 7. *Sussex. Kent.*
See before, *tit. Purveyors.*
For repaire of Vpton bridge, 3. *Iac.* 24. *Universities. Upton.*
For wages of the Knights of Parliament in Wales, 35. *H.* 8. 11.
For establishing Iustices of Peace in Wales, 34. *H.* 8. *Wales.*
For making of the bridge at Wilton over Wye, in the Countie of Hereford, 39. *El.* 24. *Wilton.*

Thus much concerning such Statutes as the Iustices of Peace, out of their Sessions of the Peace are to meddle withall.

Now for a conclusion of these Statutes and of the Services of the Iustices of Peace therein, I wish them that in all cases where the whole matter is (by the Statute) committed to the Iustices of Peace (to one alone, or to two Iustices or moe) out of their Sessions, to heare and determine, &c. as where, upon his or their owne view, or by confession of the offender, or upon examination and proofe of witnesses, (and without any indictment found or preferred) they may commit or punish an offender as convict by such view, confession, or examination and proofe; as also where they may proceed by enquirie and indirement; that in every such case of such their judiciall proceeding, they bee led by no affection, but advisedly to examine and consider of, as well the fact it selfe, as of

of the circumſtances, and then (in the feare of God, and according to law) to proceed and to ſee, or cauſe due and diligent execution of the puniſhment to be done upon the offenders, according to the qualitie and quantitie of their offence, and as the Statutes themſelves doe direct; for law without due execution and puniſhment of the offenders, is as a ſheathed ſword without any uſe or profit.

But in all caſes where the Iuſtices of Peace have power to heare and determine out of their Seſſions (*ſc.* upon their owne view, or upon the confeſſion of the offender, or upon proofe of witneſſes) if upon ſuch conviction the offender bee to bee committed to the goale, the Iuſtices of Peace ought to make a Record in writing under their hands, of all the matter, and of the proofes, &c. which Record notwithſtanding in many caſes they may keepe by them, &c.

Alſo if upon ſuch conviction the offender be to be fined to the King, then the Iuſtices of Peace are to eſtreat ſuch fine, and to deliver, or ſend the eſtreat into the Exchequer, whereby the Barons of the Exchequer may cauſe the ſaid fine (or forfeiture) to be levied to the Kings uſe.

And here I will ſhortly poine you out ſome particular offences, which by the Statutes are referred to the Iuſtices of Peace to heare and determine (out of their Seſſions) as aforeſaid, and will leave the reſt to your owne ſearch.

One Iuſtice. 1 Some particulars where one Iuſtice of Peace upon his owne view, or hearing (of the offence) may puniſh the offenders.

Alehouſe-keepers, &c. ſuffering townesmen, or any other perſon, to continue drinking in their houſes contrary to the Statute, 1. *Iac. cap.* 9. & 21. *Iac.* 7. *vide antea tit. Alehouſes.*

Towneſ-men, or ſtrangers tipling in Alehouſes, &c. contrary to the Statute, 4. *Iac. cap.* 5. & 21. *Iac. cap.* 7 *ibidem.*

Perſons that ſhall ride, or goe armed, contrary to the Statute, 2. *E.* 3. *cap.* 5 *Vide antea tit. Armour.*

Perſons that ſhall have any Teinters, &c. for the deceitfull ſtretching of cloth, *Vide antea tit. Cloth.*

Offenders in Forcible Entries, or deteiners, contrary to the Statutes: ſee *antea tit. Forcible Entrie.*

Keepers of places for unlawfull gaming, *Antea tit. Games unlawfull.*

Players in ſuch places, *ibid.*

Players at unlawfull games whereſoever contrary to the Statutes, ſee as before.

Swearing prophanely, or curſing, in the hearing of any Iuſtice of peace &c. *Antea tit. Swearing.*

2 Where one Iuſtice of Peace may puniſh offenders as convict upon their owne confeſſion.

Alehouſe-keepers, Inkeepers, or Victuallers, ſuffering towneſ-men, or ſtrangers, to continue or bee tipling in their houſes, &c. ſee *Antea tit. Alehouſes.*

Townesmen, or ſtrangers, continuing tipling in any Inne, Alehouſe, or Victualling houſe, ſee *ibidem.*

Sheriffes, &c. entring plaints in their courts unduly, *v. antea tit. Sheriffs.*

Perſons

Persons not repairing every Sunday to Church, see *antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Trespassers in Corne, Orchards, or Woods, &c. contrary to the Stat. 43. *El. 7. Vide antea tit. Trespasse.*

Offences in Tyle making, contrary to the Stat. *Vide antea Tyle.*

Offences in Watermen, contrary to the Stat. *Vide antea Watermen.*

3 Where one Iustice of Peace may punish offenders as convict upon examination, and oath of witnesses.

Alehouse-keepers, &c. suffring Towne-men or strangers to be tipling in their houses contrary to the Stat. 1 *Iac. &* 21. *Ia. V. antea tit. Ale-houses.*

Alehouse-keepers, &c. selling lesse beere, or ale, than according to the Statute 1 *Iac. ibid.*

Towne-men or strangers, tipling in Ale-houses, &c. contrary to the Statute: 4 *Iac. cap. 5. ibid.*

Persons not repairing every Sunday to Church, they may bee convicted upon the oath of one witnesse, *Vide antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Transporters of Corne, &c. *Vide antea tit. Transportation.*

Trespassers in Corne, Orchards, or Woods, &c. they also may be convicted upon the oath of one witnesse, *Vide antea tit. Trespasse.*

And yet here, and in all cases of conviction upon the Oath of witnesses, the offender himselfe must also bee heard speake, and bee examined by the Iustice of Peace, &c. Or else it is not lawfull conviction, see *hic cap. 7. & hic infr.*

4 Where one Iustice of Peace may punish offenders, as convict upon examination generally; the Statutes not shewing what persons shall bee examined; in which cases it seemeth the Iustice of Peace may thereupon examine as well the offenders themselves, as other witnesses.

The defaults of the Collectors of the Sheriffes amerciaments: as also of Bailiffes of hundreds, *Vide antea tit. Sheriffes.*

Offences in Tyle making, *Vide antea tit. Tyle.*

Offences in Watermen, *Vide antea tit. Watermen.*

5 Where one Iustice of Peace may punish offenders, upon accusation or proofe, generally; which accusation, or proofe, must be by examination of witnesses onely (as it seemeth.) And yet the party delinquent is (here also) to be first heard, before hee bee convicted or condemned, *ut supra.*

Offenders in keeping, or using guns or crosse-bowes, &c. contrary to the Statute: *Vide antea tit. Guns.*

Disturbers of Preachers, *Vide antea tit. Preachers.*

Souldiers that have purloined their horse or harneſſe, *V. antea tit. Sould.*

Note, that in these former cases, and in all other cases where the Iust. of peace is to take such examination of witnesses, or such other accusation or proofe aforesaid, though the statute doth not expressely set downe that it shall be upon oath, yet it seemeth so, that the Iustice doth it upon oath: for M. *Brooke* (sometimes chiefe Iustice of the common Pleas) was of opinion that every examination ought to be upon oath, and M. *Lamb.*

517. was

5 17. was also of opinion, that these examinations taken by the Iustices of Peace ought alwaies to be upon oath, the rather because the triall in these cases dependeth wholly upon these examinations; yea in all other cases where soever any man is authorised to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the Law will, which is only by oath. *Vid. post tit. Examination cap. 3.* Plo. 11.a.

Also where the matter is to be tried by witnesses only, it is fit there be two witnesses at the least (except where the Statute doth expressely allow the oath or testimony of one witnesse.) And so was the opinion of M. *Brooke*; that in such case there ought to bee two witnesses at the least; and agreeable thereto also is the booke and Word of God, *Matth.* 18. 16. 2 *Cor.* 13. 1. *Plo.* 12. a. Otherwise it is, where the triall is by a Iury of 12. men, there one witnesse sufficeth, yea there many times witnesses are not necessary, see *Plo. P. f.* 12. *a. & hic cap.* 3. Deut. 17. d. & 19. 15.

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Persons restrained from maulting, &c. see *antea tit. Malt.*

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Disturbers of Preachers, *Vide antea tit. Preachers.*

Offendors which shall disturbe the execution of the Stat. for rogues; and officers which shall be remisse or negligent therin, &c. *antea tit. Rog.*

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But note, that this manner of triall by examination of the offendors or witnesses, is not permitted to Iustices of Peace, but onely in cases where either the Statutes doe generally referre the triall to their discretions, or else doe specially authorise them to take the examinations.

And in all these former cases, where the Iustices may heare and determine, or may punish offendors as convict upon their owne confession, or upon examination of witnesses (it seemeth in congruitie) the Iustices of Peace may grant out their Warrants against such offenders, (or at least ought to send for them) to appeare before them to answere to their said offences; and thereupon may proceed to examine, heare, and determine the offences.

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Alſo in theſe caſes, the Iuſtices Precept to the ſheriffe, to returne a Iurie before them, may be in this or the like forme: and either in the kings name, or under the name of the Iuſtices, &c.

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Suretie for the Peace. CAP. 67.

Lamb. 77. SUrety for the Peace, is the acknowledging of a Recognisance (or bond) to the King (taken by a competent Iudge of Record) for the keeping of the Peace: and it is called ſuretie, of the word *Securitas*, becauſe the party that was in feare, is thereby the more ſecure and ſafe.

This ſurety for the Peace, everie Iuſtice of Peace may take and command in two manners, or by a twofold authority.

KB. 79. b. Lamb. 77. 1 Firſt, as a Miniſter (commanded thereto by a higher authority) as when a Writ of *Supplicavit*, directed out of the Chancerie, or Kings Bench, is delivered to his hands: upon this Writ that Iuſtice of Peace only (to whom ſuch Writ is delivered) is to direct his Warrant to cauſe the partie to be brought before him (alone) to find ſureties for the Peace. And therein the ſaid Iuſtice is to doe in everie behalfe, according as the ſame Writ doth direct him.

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2 Secondly, as a Iudge, (and by vertue of his office, and of his owne power derived from his Commiſſion) hee may command this ſuretie of the Peace to be found; and that either of his owne motion and diſcretion, or elſe at the requeſt or prayer of another.

Upon diſcretion. The Iuſtice of Peace upon his owne motion and diſcretion, may (if he ſee cauſe) command ſurety of the peace to be found, or may bind a man to the Peace (and that againſt all the Kings ſubiects, if the Iuſtice ſhall ſo thinke meet) in theſe caſes following.

1 One that maketh an aſſault, or affray, upon the Iuſt. of P. himſelfe, the Iuſtice may cauſe or command him to bee arreſted or attached, and carried preſently before another Iuſtice of P. who may commit him to priſon, till hee hath found ſureties for the Peace. *Vide hic cap.* 120. 5.H.7.6.

2 Such as in his preſence ſhall make an affray upon another, or ſhall ſtrike, or aſſault, or offer to ſtrike another, the Iuſtice may commit him, to priſon, untill he hath found ſureties for the Peace. *Vide antea tit. Affray. & Br. fit. imprif.* 12. P.R.18.19.

3 So of ſuch as in his preſence and hearing, ſhall threaten to kill, beat or hurt another, or to burne his houſe.

4 So of ſuch as in his preſence, ſhall contend onely in hot words; for from thence oftentimes doe enſue Affraies and batteries, and ſometimes maimes, yea manſlaughters and murders. 1.R.18.

5 So of ſuch as in his preſence ſhall goe or ride, armed offenſively, or with an unuſuall number of ſervants or attendants: for theſe are accounted to be an affray and feare of the people, and a meanes of the breach of the Peace: ſo of ſervants and labourers, that ſhall beare any weapons, contrarie to the ſtatute of 12.R.2. *Vide antea tit. Armor.* See Crom. 76.140. P.R.4.

6 Alſo he may binde to the peace any other perſon, to him ſuſpected to be inclined to the breach of the peace. 9.Ed.4.3. P.R.18.

7 If (out of the preſence of the Iuſtice of P.) any man ſhall threaten to kill, maime, or beate another, or doe attempt, or goe about to doe it: then any Conſtable being preſent may arreſt ſuch offendor, to come before a Iuſtice of peace to find ſureties for the Peace: and the Iuſtice may binde him to the peace. Crom.135. & 143. P.R.22. Fi.Bar.101.

8 If any Conſtable ſhall perceive any other perſons in his preſence to bee about to breake the peace, either by drawing weapons, or by ſtriking, or aſſaulting one another, or by aſſaulting the Conſtable himſelfe; he may take aſſiſtance, and carry them all before the Iuſtice to finde ſureties for the peace, and the Iuſtice may binde them. 1.H.7.7.

9 If the Conſtable ſhall learne that certaine perſons bee fighting or quarrelling in a houſe, he may breake open the doores and arreſt them, and carry them before a Iuſtice of peace to finde ſurety of the peace: and the Iuſtice may binde them. P.R.21.

10 Yea, the Iuſtice of peace (either upon his owne diſcretion, or upon any mans complaint) may make his warrant, for any ſuch as have made an affray (though out of his preſence) and may binde them to the peace. *Vide antea tit. Affray.*

11 If one hath received a wound, it ſeemeth the Iuſtice of peace may take ſuretie of the peace of the one and the other, (by his diſcretion) untill the wound be cured and the malice be over. *Popham* late Lord chiefe Iuſtice of England (an honorable and grave Iudge) did accordingly betweene *Iames* and *Benton* at Cambridge Aſſiſes, 3.*Iac.* See Br. Peace 21. 21.Aſſ.27.

12 All ſuch as ſhall goe or ride armed (offenſively) in Faires, Markets, or

or elſe where; or ſhall weare or carry any guns, dags, or piſtols charged; it ſeemeth any Conſtable ſeeing this, may arreſt them, and may carrie them before the Iu. of P. & the Iuſt. may binde them to the P. yea though thoſe perſons were ſo armed or weaponed for their defence upō any private quarrel, &c. for they might have had the peace againſt the other perſons: and beſides, it ſtriketh a feare and terror into the Kings Subjects.

2. E. 3. c. 3. Commiſſion.

See more *hic antea tit. Affray and Armor.*

13 Alſo the Juſtice of peace (upon his diſcretion) may binde to the peace a common Barretter. *Vide tit. Barretter.*

14 So of Ryotters. *Vide tit. Ryotters, & Lamb. 79.*

11. E. 4. 40.

15 He that ſtandeth bound to keepe the peace, if he hath broken (or forfeited) his Recogniſance, the Iuſtices of peace may & ought of diſcretion to binde him anew; but yet by good opinions, that muſt not be done untill the party be cōvicted of the breach of the peace, upō his Recogniſance, for before his cōviction, it reſteth indifferent whether the Recogniſance be forfeited or no: But after that he is thereof convicted, and that the forfeiture be levied, the Recogniſance is then utterly determined, and then he is to be cōpelled to find new ſurety, or els to be ſent to the Gaol.

Br. Peace 17. Lamb. 119. Crom. 142.

So it ſeemeth, though the forfeiture be not levied, yet if the party be convict for breaking the peace, he ſhall be bound of new. *Cromp. 141. & Br. Recog. 21.*

16 Alſo he that ſtandeth bound to keepe the peace, if his ſureties be inſufficient, the ſame Iuſtice, or another Iuſt. of the peace may compell him to finde better ſureties.

And in many of the former caſes, the Juſtice of peace ought (of dutie, or at leaſt in good diſcretion) to command this ſurety for the peace, although the ſame be not required by any other perſon: And if any ſuch perſon ſhall refuſe to give ſuch ſurety, the Iu. of peace ought to ſend him to priſon, there to remaine untill he ſhall finde ſuch ſuretie.

2 Hē. 4. 3. Br. Peace 8.

If a Iuſtice of peace (upon his owne diſcretion) ſhall cauſe one to be arreſted to finde ſureties for the peace, and ſhall after let him goe without taking ſuretie, or binding him to the peace, yet the party hath no remedie: for an action will not lye againſt the Iuſtice of P. for this, he being a Iudge of record. See *9. H. 6. f. 60. & 9. E. 4. f. 3. Br. Iudges 2. 10. & Br. f. x. imp. 12. & hic cap. 46. & 120.*

Lamb. 80. P. R. 18.

A Iuſtice of peace may perſwade a man to require the ſurety of peace againſt another, and he himſelfe may grant a warrant for it, becauſe it is no more than he might have granted of his owne authority, without any demand made; and it ſhall be preſumed that he ſaw cauſe to doe all this.

Upon requeſt.

Alſo at the requeſt or prayer of another, the Iuſtice of peace may command this ſuretie of the peace, and may grant his warrant for it.

F. N. B. 79. b. Lam. 84. 85.

But here the Iuſt. of P. muſt and ought firſt to take an oath of the partie that demandeth the peace, which oath muſt be to this purpoſe, *ſc.* That he ſtandeth in feare of his life, or of ſome bodily hurt to be done to himſelfe, or to have his houſes burned, (and that he doth not crave the peace for any private malice, or for vexation, but of very feare, and for the needfull ſafetie of his body, or houſes;) for the words of the Commiſſion herein are, *Et ad omnes illos qui alicui, vel aliquibus de populo noſtro,*

vestro, de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.

So he that shall be threatned to be hurt in his body (*sc.* to be beate, wounded, maimed, or killed) the party so threatned may crave, & have the suretie of peace against the other, & it is to be granted properly in such cases.

Also if a man doe feare that another will kill, maime, beate, assault, or hurt him in body, he may crave the peace against such other person. Fitz. 79. b.

So if a man doe feare that another will burne his house.

So if a man doe feare that *A.* will procure or cause any such hurt to be done him by another, either in his body, or in his houses; for the words of the Recognisance be, *Non faciet, nec fieri procurabit.*

So if a man lieth in waite to beate, kill, or hurt another, it is good cause to require this suretie, *Cromp.* 135. Crom. 135. a.

Nec nota ces parolx deūt in le Commission, Minas fecerint &c. per quex parolx, fuit que per le Commission, le peace nē deū grant sur ascun request, ne autrement sinon tantum, lou home est manasse. et pur ceo lou A. craved le peace versus B. pur ceo que B. usa de veer ove un Pistol, et le Justice de p. sur ceo granted le peace, Sir Nich. Hyde blamed le Justice, disant que il ne deveit aver lye B. a le peace, pur ceo que il n'ad manasse A.

If a man be threatned to have his goods burned, it seemeth by the opinion of M. *Fitz.* that he may demand surety of the peace for this: *quare tamen*, because he may recover his goods, or damages for, and to the value of the same, *Co. l.* 255. Lamb. 14.

And where a man shall threaten to imprison another, it is holden that the peace shall not be granted, for that the party wronged may have his action of false imprisonment, or a writ *de Homine Replegiand*, and so shall recover damages for his imprisonment. 27. Ed. 4. 6. Br. Peace 82.

Yet inquire hereof, for to threaten imprisonment is within the words *Minas de corporibus*: and like harme may happen to a man by hard imprisonment, as by cruell beating of him: And to threaten imprisonment is a cause to avoyd a deed or bond, as well as to threaten to kill, or maime one, &c. 39. *H.* 6. *Br. Duress.* 9. *vide Co. l.* 253. Lamb. 15. F.N.B. 80. g. Lamb. 15.

Where a man is in feare, that another will hurt his servants, or his cattell, or other goods, this suretie of the peace shall not be granted by the Iust. of peace: But in this case M. *Fitz.* saith, the partie may have a speciall writ out of the Chancery directed to the Sheriffe, that he shall cause such person to find suretie, that he shall doe no hurt or damage to the other man in his body, or to his servants, or goods. And if he will not find suretie, that then he shall arrest and detaine him in prison, untill he shall find suretie: and that the Sheriffe shall certifie all that he shall doe thereupon, into the Chancery, &c. And it seemeth the Sheriffe ought to take such suretie, by Recognisance. And yet if a man shall threaten to hurt my servant, or my wife, or childe, I see no cause but that in their behalfe I may crave the peace at the Iust. hands, by the words of the Commission, and that the Iustice ought to grant it.

If a man will require the peace because he is at variance, or in suit with his neighbour, it shall not be granted by the Iustice of peace.

Note also, the suretie for the peace shall not be granted but where there

there is a feare of some present or future danger, and not meerely for a battery, or trespasse that is past, or for any breach of the Peace but in past: for this suretie of the Peace is only for the securitie of such as are in feare. Now *Metus est præsentis vel futuri periculi causa mentis trepidatio*: And so this suretie is, *providere præsentia, & futura, & non præterita.* Br. Peace 41. 11. H. 14.

And as for a battery, or other like Trespasse that is past, the party wronged may have his action of Trespasse of batterie, &c. or may punish the offender by indictment at the Kings suite: and yet in such case the Iustice may (if he see cause) binde over the affrayor. *Vide antea.*

If the Iustice of Peace shall perceive that this suretie for the peace is demanded meerely of malice, or for vexation only, without any just cause of feare, it seemeth he may safely deny it. As in common experience we finde it, That where *A.* shall upon just cause come and crave the peace against *B.* and hath it granted to him; when *B.* shall come before the Iustice, *B.* likewise shall crave the peace against *A.* (and will perhaps surmise some cause) but yet will nevertheless be content to surcease his suit and demand against *A.* so as *A.* will relinquish to have the peace against him; here the Iustice of peace shall doe well (as I thinke) not to be too forward in granting the peace thus required by *B.* but to perswade with him, and to shew him the danger of his oath which he is to take, but yet if *B.* will not be perswaded, but will take his oath that he is in feare (where indeed he neither doth feare, nor hath cause to feare) this bath shall discharge the Iustice, and the fault shall remaine upon such complainant.

And when the Iustice hath so granted the peace to one that (in the Iustices judgement) shall crave or require it onely out of malice or for vexation, the Iustice may presently in good discretion binde him to the good behaviour, that so required the peace.

For whom and against whom this suretie of the Peace shall be granted. Cap. 68.

THe Law hath conceived such an opinion of the peaceable disposition of Noble-men, that it hath beene thought enough to take one of their promises upon their Honour, that he would not breake the Peace against a man. *Br. Contempts 6. 24. Ed. 3. 17. & 18.* Noble-men

And therefore if a man shall have cause to have the suretie of the Peace against a Lord of the Parliament, or such great and noble personage, hee shall not have a warrant from the Iustices of Peace for that purpose, nor yet have a *Supplicavit* out of the Chancery, directed to the Iust. of Peace therefore: but if there be cause, hee may have a *Subpœna* out of the Chancery (of common right as it seemeth) and there such Lord or Noble-man shall be bound to the Peace. And yet if such Lord will not appeare upon the *Subpœna* served, *quare*, if an Exigent will lie against him upon such his default. *M. Crom. f. 134. b.* saith that it was holden in the case of the *L. Cromwell*, in the Chancery, about 18. *El.* That an attachment lieth not against a Lord where he maketh default upon a *Subpœna* against him out of the Chancery, *Dier 314.* seemeth to accord. Fitz. Subp. 20. Co. 4. 55. 56.

But though it bee true that the person of a Baron (who is a Peere of the Parliament) shal not be arrested (for or in cases of debt, or trespas, &c.)

11.H.4.15. Br.Repl. 19. Co.9.49. by his body, first in respect of their dignitie, secondly in respect that the law presumeth that they have sufficient Lands and Tenements wherein they may be distrained, yet in cases of contempt it seemeth they may be arrested by *Capias*, or Attachment, &c. *V.27.H.8.f.22.b.*

Fitz.Subp. 20. Or else (it seemeth) that the partie may crave the peace in the Chancery, against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the Sheriffe) and then the Sheriffe may and ought to execute the same: and if the Sheriffe shall not do his office therin, an *Alias Plur.* and attatchment lieth against him. And if the Sheriffe shall returne, that such Lord is so puissant that he cannot arrest him, upon such return the Sheriffe shall be grievously amerced (for he might have taken *Posse comitatus, &c.* he might have levied 300 men by his discretion, if their had been need, to have aided him in such case.) And if such Lord or Peere who is by the Sheriffe so arrested, shall refuse to obey the arrest, and shall make a *Rescous*, wherupon the Sheriffe shall return a *Rescous*, hereupon shal there be an attachment granted out against such Lord, to arrest and take his body for such his contempt.

F.N.B. 79.g.

Crom. 134.

Ca. 4.32.33. 20.H.6.29. Stam.132. 153. The same law and remedy seemeth to be where a man hath cause to have the suretie of the peace against a Dutches, Countesse, or Baronesse; for they are Peers of the Realme, and shall bee tried by their Peers, although in respect of their sexe they cannot sit in Parliament: and they are in the same degree (as concerning their Nobilitie, and the priviledges incident to their dignities) with Dukes, Earles, and Barrons. But here note this diversitie, *sc.* if such woman being a Countesse, or Baronesse, &c. by marriage onely, shall marry again under the degree of Nobilitie, she hath thereby lost her name of dignitie (together with the priviledges of her said Nobilitie also, as it seemeth) for in such a case, *Si mulier nobilis nupserit ignobili, deserit esse nobilis*, and that which was gotten by marriage, may also be lost by marriage; for *Eodem modo quo quid constituitur, dissolvitur*; But if she be Noble by birth or discent, whomsoever she shall marry, yet she remaineth Noble: for birth-right *est character indelebilis. Vide Dyer 79. & Br. Nosme de dignitie, 31. & 69. & Co.lib. 16.8.*

Co.ibid.

And yet by the Curtesie of England, if women get to any degree of estate, they never lose it by marrying after more meanly, but doe still take place according to the estate of their first husband.

Surety of the peace may be granted by the Iustice of Peace against a knight and against all other lay persons, being under the degree of a Baron or Peere of the Realme, and they shall be bound with sureties.

34.H.6.23. Br.Meigne. 24.R.15. Eccle siasticall persons (if they be not attending upon Divine Service) may be arrested for the peace, and they shall be bound with sureties. But whilest they are doing any Divine Service in the Church, Churchyard, or other place dedicated to God, they may not be arrested. 50. *Ed.* 3.5. *Arrest* 1. See stat. 1.R.2.cap.15. & 1.Ma. cap.3.

Surety of the peace may bee granted against the Sheriffe, under-Sheriffe, Coroner, escheator, and other such officers of Iustice. But M. Marcon adviseth, that such persons be not bound *versus cunctum populum*, but only against such persons as shal demand it, lest otherwise it should argue them unworthy & unmeet to beat or exercise any such office in the commonwealth, if there should be cause to bind them *versus cunctum populum.*

Si in overt Seſſions un Iuſtice de peace abuſer auter Iuſtice de P. ſemble que les auters Iuſtices pois luylyer al peace. Cromp. 122 a. Quare ſil ne manaſſel' anter?

One Iuſtice of Peace may grant this ſuretie to any man, againſt one of his fellow Iuſtices (and yet the Commiſſion is joynt;) but great diſcretion is herein to be uſed.

Yea, a Iuſtice of Peace, upon demand, may grant this ſuretie of the P. againſt his owne wife: and yet he and his wife are but one perſon in law.

If ſuretie of the Peace be demanded againſt a Iuror at the Seſſions, it is grantable; but yet the ſame would not bee granted or done before the Seſſions be ended.

One Iuſtice of Peace may demand this ſuretie of the peace (at the hands of his fellow Iuſtice) againſt another man.

If a man hath cauſe to have ſuretie of the peace againſt one dwelling in the *Cinque* Ports, he muſt have a Writ out of the Chancery, directed to the Conſtable of Dover, and to the Warden of the *Cinque* Ports: the forme thereof, ſee in *Fitz. N. B.* 80.

Fitz. N. B. 80.

The wife may demand this ſuretie againſt her husband, (if hee ſhall threaten to kill her, or outragiouſly to beat her, or if the wife hath any notorious cauſe to feare that he will do ſo) and it ſhall be granted her by the Iuſtice of Peace, or ſhee may have it by *Supplicavit* in the Chancery, *Fitz. 238. f. Br. Peace 23.* *wife.*

Fitz. 80. f.

The husband, for the like cauſes, may demand ſuretie of the peace againſt his wife. *Et ſi el ne poit trove Sureties, el ſerra commit, &c. & iſſint home poet eſte rid dun Shrew.*

Alſo the Iuſtice of Peace, upon his owne diſcretion, may in either of the aforeſaid caſes betweene the husband and wife (eſpecially happning in his preſence) grant ſuretie of the peace.

Lamb. 81. An Infant under the age of fourteene yeers, may demand this ſuretie, and it ſhall be granted him.

Alſo this ſuretie of the peace may be granted at the praier of any perſon, againſt a *feme covert*, or againſt an Infant though hee bee under 14. yeers of age. (For if an Infant under 14. hath diſcretion to demand the peace, &c. then hath he diſcretion to breake the peace.)

But an Infant, and a *feme covert*, ſhall be bound by ſureties onely, and they themſelves ſhall not be bound, and if they cannot finde ſureties, they ſhall be cõmitted to priſon untill they have found ſureties. And yet if an Infant ſhal be bound to the peace, &c. by Recognizance taken by a Iuſtice of Peace, it ſeemeth he ſhall be eſtopped to avoid ſuch a Record, if hee doth not avoid it during his minoritie, for it is not void but voydable, by *Audita querela* during his minoritie, *Dyer 232.*

Co. 10. 43. Cromp. 239. a.

But if a *feme covert* ſhall bee bound, or acknowledge ſuch a Recognizance (though her husband joyne therein with her) yet it is meerly void as to the wife, although ſhe overliveth her husband.

A man of *Non ſane memorie*, this ſuretie ſhall neither be granted againſt him, nor to him upon his requeſt; and yet if there ſhall be cauſe, the Iuſtice of Peace (upon his diſcretion) ought to provide for his ſafetie.

A man that is Lunaticke *ſcz.* who at ſome ſeaſons hath the uſe of reaſon, and at other times not, it ſeemeth this ſurety of the Peace may be

bee granted against him; and also that hee may demand the same against another.

And if one of *non sanæ memoriæ*, or a Lunatike, bee himselfe bound by Recognisance before a Iustice of Peace, to keepe the peace, it seemeth such Recognisance shall binde them, and all others for ever. See Co. 4. 124. & 11. 77.

But *quære*, if there be not a difference to be taken herein, where a Recognisance by an Infant, or one that is *non compos mentis*, shall be acknowledged in a Court of Record, or in open Sessions, and where before a Iustice of Peace out of the Sessions.

A man that is deafe, dumbe, and blinde, be it naturally, (*sc.* that he was so borne,) or accidentally, he shall not have this suretie granted to him, for he hath no understanding to aske it, and yet for such a person, (or any other person not having reason to demand the Peace) if there be cause the Iustice of P. upon his discretion ought to provide for their safetie.

A man that is borne dumbe and blinde, may have understanding; and therefore it seemeth this suretie may be granted to him, or against him.

But a man that is borne dumbe and deafe, can hardly have understanding; for though the sight be the chiefest sence, yet by hearing we come chiefly to knowledge, and therefore it seemeth not grantable to him, or against him. See *Stamf. de Prærog fol.* 33. 34. *Co. l.* 135.

And yet a man that is dumbe and deafe, or blinde and deafe accidentally, may have understanding, and therefore this suretie may bee granted to him, or against him.

Also this surety of the peace may be granted against an impotent person, although he be such a one as is not like to breake the peace himselfe; for he may procure another to kill or beat one: and the common forme of Recognisance is to binde a man from procuring hurt, as well as from doing hurt.

This suretie of the peace may also be granted to, or against, a man attainted of treason or felonie.

The like law of him that is convicted of Heresie.

A man excommunicate may have this suretie granted to him, or against him. Crom. 134.

So also of a man that is abjured the Realme; for notwithstanding the abjuration, hee oweth the King his legeance, and remaineth within the Kings protection, and the King may pardon and restore him againe. *Qui abjurat regnum, amittit regnum, non regem, Co. 7. 9. b.*

A man attainted in a *Præmunire*, may (at this day) require, and ought, to have this suretie granted to him. *P. R. 19. Crimp.* 133.

An alien borne, who is made Denizen, may have this suretie; and so of an alien borne who liveth in England under the kings protection (although he be not made Denizen.) Crom. 51. 1 R. 19.

And so of an alien, whose king is in league with our king; or if there be no warr betweene this Realme and that Realme whereof the alien is, for by the common Law, all these may get and have within this Realme any personall goods, and may sue for the same, and so have the benefit of the kings lawes and protection. But an alien who is the kings enemie, (*sc.* where there is open warre betweene our king and his king) shall not have Co. 7. 17. Dyer. 25

have this ſurety granted to him, nor any other benefit of the Kings lawes.

Who ſhall be ſaid to be an Alien, ſee *Co.* 7. 16. 17.

Co. 7. 18. In *Calvins* caſe, 6. *Ia. Reg.* there is a difference taken betweene *Antenati* and *Poſtnati*, in Scotland, where it is holden that *Antenati* in Scotland, *ſc.* ſuch as were borne before the Kings happy comming to the Crowne of England, are here aliens borne; the reaſon is, for that at the time of their birth, they were under the legeance and obedience of another King; and he could not be a ſubject borne of the Kingdome of England, that was borne under the legeance of a King of another Kingdome. And yet it is manifeſt that *Antenati* being the Kings ſubjects, are herein provided for by the commiſſion it ſelfe; the words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo noſtro, &c.* of which number *Antenati* be; ſo as they may and ought to have this ſuretie granted them, as well as any other ſubjects. See *Dyer fol.* 304. *Pl. fol.* 306. *a.*

6. 7. 23. An Iriſhman borne is a naturall borne ſubject, and capable of, and inheritable to lands in England, and therefore may have this ſuretie.

Co. 7. 17. But it may be queſtioned, whether an Infidell, Pagan, or Iew ſhall have this ſuretie granted them. For in law they are *Perpetui inimici*, There is betweene the Chriſtians and them perpetuall enmitie, and can be no peace: Neither can they get any thing within this Realme, nor maintaine any action at all, 12. *H.* 8. 4.

A Villeine or Bondman may have this ſuretie of the peace againſt his Lord, and the Lord may have it againſt his Villeine, and yet it maketh no manumiſſion, although it were demanded by the Lord without any proteſtation, &c.

How this ſuretie of the peace may be commanded, and how the ſame Commandement ſhall be executed. CHAP. 69.

THe Iuſtice of peace may command this ſuretie of the peace either by word onely, or by writing.

2 H. 7. 8. 1 By word onely, the party being in his preſence; as if in the preſence and hearing of the Iuſtice of peace, one man doth threaten another, or ſhall make an affray or aſſault upon another, or doe other like thing tending to the breach of the peace, the Iuſtice of peace may command him by word to find ſureties for the peace. *By word.*

9 H. 5. 9. Alſo if one ſhall demand this ſuretie againſt another, who is then in the preſence of the Iuſtice of peace, and will be ſworne that he is affraid of him, the Iuſt. may by word command the ſame partie to finde ſureties for the peace.

4 H. 7. 8. 9. And the Iuſtice of peace in ſuch caſes may by word only command the Conſtable, or any other knowne Officer (or his owne ſervant) being then preſent, to arreſt ſuch partie to find ſureties for the peace, (and to take the party into his or their cuſtody, &c.) And if the partie ſhall refuſe to find ſuch ſureties, then the Iuſt. of P. may commit him to the Gaole.

But if the partie (againſt whom this ſuretie of the P. is demanded) be abſent, it is otherwiſe; for a Iuſtice of P. cannot ſend for any man, or command any man to be arreſted, or brought before him, or to be impriſoned, who is not in his preſence, by word onely, but he muſt make his

his warrant or precept in writing. And *Popham*, chiefe Iuſtice, ſaid, That the Iuſtices of the Kings Bench, when they ſend for any of the Kings ſubjects, it is either by Writ, or by a Warrant, or by a Tipſtaffe: but the Tipſtaff (ſaid he) is by preſcription, except that the partie be in Weſtminſter Hall, &c. See the Caſe betweene *Woddy verſus Bokers & Readhead: Termino Mich. Ann. 2. Iac. Regis. Rotul. 480. in Banco Regu.*

By writing. This Precept or Warrant then muſt be made in writing, and under the Iuſtice his ſeale; and muſt be directed to ſome officer, or other indifferent perſon, and muſt containe the cauſe, and at whoſe ſuit, to the intent the party to be bound, may provide his ſureties, and take them with him.

The forme of which Precept, ſee *poſtea tit. Warrants, cap.* 121.

The Iuſtice of P. may make his Warrant to bring the partie before himſelfe (to find ſuretie for the peace) by the opinion of *Wray*, chiefe Iuſtice; for he that maketh the Warrant, for the moſt part, hath the beſt knowledge of the matter, and therefore he is the fitteſt to doe Iuſtice in ſuch caſe. And yet the moſt uſuall manner is, to make ſuch a Warrant, to bring the partie before the ſame Iuſtice, or ſome other of the Iuſtices of P. of the ſame Countie, &c. And Iudge *Fineux* his opinion was, That where a Iuſtice of peace doth make any Warrant for the peace *ex officio*, (*ſc.* by force of the Commiſſion, and not by vertue of a *Supplicavit*,) there the partie may chuſe to appeare before him or any other Iuſtice in that Countie: And that the partie may have his action of falſe impriſ. againſt the officer, if he doe otherwiſe compell him. Otherwiſe it is in the execution of the writ of *Supplicavit*, as you may ſee here *poſtea ſub hoc titulo.*

Co. 5. 32. Br. Peace, 23. 21. H. 5. 21.

Who may ſerve this Warrant, and whether the Officer may make his deputie; and whether they need ſhew their Warrant or no; and whether they may breake open the doores, &c. ſee hereof *tit. Warrants poſtea, cap.* 117.

How it ſhall be executed. The Conſtable (or other officer) before he arreſt the partie, upon ſuch a Warrant, ought firſt to acquaint him with the matter, and withall, to require or charge the partie in the Kings name, to goe (with him) before the Iuſt. to find and put in ſureties according to the Warrant: and if the partie ſhall refuſe to doe this, *ſc.* ſhall refuſe either to goe before the Iuſt. or to find ſureties, then the officer (by the words of the warrant) may and ought forthwith to arreſt him, by vertue of that Warrant, and may convey him to the gaole without carrying him to any Iuſtice, and there the partie ſhall remaine untill he ſhall voluntarily offer and find ſureties: And then ſuch officer ought to be at the next Seſſions of the Peace there to deliver in his ſaid Warrant, and to certifie all that he did thereupon.

5. Ed. 4. 9. Lamb. 50. Yet ſome Preſidents are, quod expunct. &c. P. R. 20. 2 Cron. 135. Br. F. imp. 28.

But if the partie ſhall yeeld to goe and find ſureties, then the Officer may not abſolutely arreſt him: But yet the Officer is not bound to goe up and downe with the partie, to find ſureties, but may keepe the partie untill he can procure ſureties to come to him: And if afterwards the partie ſhall make any reſiſtance, or ſhall offer to goe his way, then the officer may arreſt him, and by vertue of that Warrant may carry him to the Gaole, and may alſo impriſon him in the Stockes, untill he can provide ayde to carry him to the Gaole.

When

14.H.7. Br. Peace 7. & Maiap. 39

When the partie commeth before the Iustice of peace, by force of his warrant (or by force of any other like warrant for the peace, good behaviour, or a Riot, or the like) the party must offer sureties to the Iustice of peace, or else the Iustice may commit him to prison; for the Iustice needeth not to demand suretie of him.

Co. 5. 50.

Also after that the partie shall be brought before the Iustice, if before him hee shall refuse to finde sureties, the officer without any new Warrant or commandement, may carry the party to prison, and that by the words of the first warrant, and if he shall refuse thus to doe, that then, &c. See the forme of the warrant.

5. Ed. 4. 6. P. R. 30.

If the officer doe arrest the partie, and doe not carry him before some Iustice of peace to finde sureties, &c. or upon the refusall of the partie, if the officer shall arrest him, and doe not carry him to the Gaole, in both these cases the officer is punishable by the Iustices of peace for this neglect, (by Indictment and fine at their Sessions:) And also the party arrested, may have his action of false imprisonment for the arrest: for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. 21. H. 7. 23. a. See 3. H. 7. fol. 2. b. Brian & Br. faux imp. 21.

And if the partie bee imprisoned for default of sureties, and after hee that demanded the peace against him happen to die, or shall release the peace, it seemeth in these cases, the Iustice of peace may make his Liberate or warrant for the deliverie of such prisoner; for after such death or release, there seemeth no cause to continue the other in prison. Also any Iustice of peace may (upon the offer of such prisoner) take surety of him for the peace, &c. and may thereupon deliver him.

4. E. 4. 16. 2. H. 7. 24. Br. Privilege 35. & 52. Lamb. 96.

It seemeth (by some opinions) that if the partie imprisoned for not finding sureties, hath a suit depending in the common place, hee may by the course of that Court, by a Writ of Priviledge, bee discharged of his imprisonment, if the other party be not ready in the court at the day of the returne of the writ, to pray there new sureties of the peace. But *quære*, for it may bee hee which demanded the peace, hath no notice of the remooving of his body, and then how can he be ready in the court of common place at the day? and therefore it may seeme a hard case so to bee defeated of this surety.

If the party hath gotten sureties, then if the warrant proceed *ex officio* (and not upon the Writ of *Supplicavit*) and bee a generall warrant (*sc.* to come before me or some other Iustice) the party may goe before any other Iustice of P. to offer his surety; yet he shall not enforce the officer to travell to a Iustice out of the division or Limit where they be dwelling, without good cause: Nay it is at the election of the officer (who is the minister of Iustice) to carry the party attached, to any other Iustice of peace that he will: for it is more reason to give this election to the officer (who in presumption of Law is a person indifferent, and is sworne to execute his office duely) than to give the election to the delinquent himselfe, who by presumption will seeke shifts, and to wearie the officer; this hath been so adjudged.

Co. 5. 59. Br. Fa. Imp. 11. Br. Peace 9.

If the other Iustice of peace (before whom the partie so attached shall come)

come) shall refuse to accept and take such surety being offered to him, this is punishable in the Starre-Chamber: for such Iustice of P. ought to take of him such surety, and to binde him by Recognisance: but yet that must bee done in such sort, in all points, as the forme of the former precept doth require: And thereupon the same other Iustice of Peace (having so taken surety for the Peace) may and ought upon request, to make his *Supersedeas* to all Officers, and to all other the Iustices of Peace of the same County, and thereby the said party shall be discharged from finding other surety, and from any other arrest for the same cause: But by such *Supersedeas* that other Iustice cannot discharge the first Warrant of the first Iustice, untill the party bee bound indeed; nor can give any other day to the party to appeare at any other Sessions, &c. Lamb.98. *Supersedeas by a Iu. of P.* Crom.143.

Also a Iustice of Peace of the County, by a *Supersedeas* cannot discharge a Warrant awarded by his fellow Iustice, by force of a *Supplicavit* to him directed out of the Chancery, or Kings Bench, to take the surety of Peace of one resident in that County.

Also when a man doth feare, that surety of the Peace will be demanded against him in the countrey, or doth heare that such a Warrant for the Peace is already granted out against him, by a Iustice of Peace; it seemeth in either of these cases, he may goe and give surety of the Peace before any other Iustice of Peace of the same County where hee dwelleth, and thereupon may have a *Supersedeas* from the Iustice of Peace, &c. But in such case it is fit that such party bee urged by such Iustice to put in sufficient sureties, and that hee bee bound towards the King and all his people, and to appeare at the next Sessions.

If any Officer having a Warrant from a Iustice of Peace to arrest a man to finde surety of the Peace, shall receive a *Supersedeas* (out of the Chancery, or Kings Bench, or from any Iustice of the Kings Bench, or from any Iustice of Peace of that County) to discharge the same surety of peace, and yet nevertheless will urge the party (by force of his Warrant) to finde (new) surety for the peace, the party may refuse to give it, and if he be arrested or imprisoned for such refusall, he may have his action of false imprisonment against such officer: for such *Supersedeas* is a discharge of the former precept or warrant. Lamb.101.

The forme of a *Supersedeas* granted by a Iustice of Peace; See *postea tit. Warrants, Cap.* 128.

And this *Supersedeas* is sufficient, though it neither name the sureties, nor containe the summes wherein they are bound; but yet it is the better forme to expresse them both. See 2.*H.*7.1. Lamb.99.

If the party shall mislike to be (or stand) bound to the Peace, by the Iustices of Peace in the countrey, then may he (either before, or after that he is bound in the countrey) goe, or send up to London, and there give surety for the Peace (either in the Kings Bench, or in the Chancerie;) and thereupon the partie may have a *Supersedeas* (out of the court, where he hath given such suretie) to restraine the Iustices of P. of the country, from taking any surety of the Peace of him: and then the Iustices of Peace of the country after the receit of such *Supersedeas*, must forbeare to make any warrant for the Peace against that party. And if any Iustice *Supersedeas from above.* Pla.N.B.fo. 248.c.

of

of peace have granted out any ſuch Warrant againſt the ſaid partie, the ſaid Iuſtice muſt make his *Superſedeas* to the officers, thereby cõmanding them to ſurceaſe to put his former Warrant in execution, and ſo to diſcharge it, and to diſcharge the partie of an arreſt, or impriſonment thereupon. See more *poſtea ſub hoc titulo.*

The forme of a *Superſedeas* for the peace out of the Kings Bench, See *lib. Intr.* 454.

The forme of a *Superſedeas* for the peace out of the Chancery. See *Fitz.* 238. *c. & Regiſter* 89.

Note, that this *Superſedeas* out of the Chancery, may be procured at any time in the vacation, and out of terme. *Fitz. Nat. Br.* 236. *a.*

Lamb. 202. If the Iuſtices of peace ſhall not ſurceaſe, after a *Superſedeas* (out of the Chancery, or Kings Bench) to them delivered, an attachment will lye againſt him or them for ſuch contempt, and beſides they may be fined and impriſoned for it.

Yea ſuch a *Superſedeas* comming out of thoſe high Courts, to the Iuſtices of peace, they ought thereupon to ſurceaſe, although ſuch a *Superſedeas* ſhould be awarded againſt law.

If ſuch *Superſedeas* ſhall be directed to the Iuſtices of peace, and Sheriffes; that Iuſtice to whoſe hands it ſhall be delivered, may keepe it, and may deliver the label to the partie.

And in theſe and the like caſes the Iuſtice of peace ſhall doe well to ſend to the next generall Seſſions of the peace, as well the ſaid *Superſedeas* (if it come to his hands) as alſo the Recogniſance which he had formerly taken of the partie (if he hath taken any;) for peradventure the Recogn. was forfeited before the *Superſed.* was purchaſed; or if it were not forfeited, yet the conuſor is not indamaged thereby.

If the partie ſhall procure ſuch a *Superſedeas* (out of the Chancery or Kings Bench) after that he is bound (by Recogniſance) before the Iuſt. of peace, to keepe the peace, &c. and to appeare at the next Seſſions, *quare* Lamb. 115. 116. whether the partie ſending (by his ſervant) ſuch *Superſedeas* to the Iuſt. of Cam. 130. P. at the next Seſſions, be thereby diſcharged of his appearance there, the Recogn. alſo being certified thither by the Iuſtice.

It ſeemeth to ſome, this difference is to be holden therein, *ſc.* if the partie were bound (before the Iuſtice of peace) to keepe the peace againſt all men, &c. and ſhall after procure ſuch a *Superſedeas*, teſtifying that he hath found ſuretie in the Chancery, &c. againſt all men for ever, and ſhall ſend this to the Seſſions, this ſhall diſcharge his appearance at the Seſſions: otherwiſe if the *Superſedeas* ſhall teſtifie, that he hath found ſuretie, but till a certaine day (which is after the next Seſſions.) But yet it ſeemeth ſafeſt in both caſes, for the partie to appeare to ſave his Recogniſance. See to the like purpoſe the caſe in 28. *H.* 8. *Dyer. f.* 25. where 3 H. 8. Dyer 25. a man being arreſted by the Sheriffe upon a *Capias*, found ſureties for his Cam. 140. appearance at the day, and there came a *Superſedeas* to the Sheriffe, and it was mooved whether it were neceſſary for the defendt. to appeare, or not, to ſave his bond, or that this appearance and ſurety were diſcharged Intr. by the *Superſedeas:* and the opinion of the Court was, That he ought to appeare for the ſaving of his bond. Alſo the Preſidents or Entries are,

that the party bound did ſhew his *Superſedeas* in Court, and prayed allowance thereof, and was thereupon diſcharged.

But for that divers contentious perſons (deſervedly fearing to be bound to the peace or good behaviour, by the Iuſtices of peace in the Countrey) do oftentimes procure themſelves to be bound to the peace or good behaviour, in the Chancery, or Kings Bench, upon inſufficient ſureties, or upon colourable proſecution of ſome perſon, who will be ready at all times to releaſe them at their owne pleaſure; whereupon his Majeſties Writ of *Superſ.* is often directed to the Iuſtices of P. &c. requiring them to forbeare to arreſt or impriſon the parties for the cauſes aforeſaid; by meanes whereof the ſaid contentious perſons do greatly diſturbe their neighbours, and affront the Iuſtices of peace, to the evill example of others: therefore it is inacted by the ſtatute made 21. *Iac. cap.* 8. That all Writs of *Superſedeas*, to be granted by or out of either of the ſaid Courts of Chancery, or Kings Bench, ſhall be voyd; unleſſe ſuch Proceſſe be granted upon motion in open Court, and upon ſuch ſufficient ſureties as ſhall appeare unto the Court, upon oath to be aſſeſſed at 5. li. lands, or 10. li. in good, in the Subſidie booke at leaſt, &c. And unleſſe it ſhall alſo appeare firſt unto the ſaid Court, that the Proceſſe of peace or good behaviour, is proſecuted againſt him or them, deſiring ſuch *Superſedeas*, *Bona fide*, by ſome party grieved in that Court, out of which ſuch *Superſedeas* is deſired to be ſo awarded and directed. 21. Ia. cap. 8.

Si garrant pro pace ſoit grant vers un que ne Oſſa appeare all Seſſions pur feare de auter arreſt, &c. ſon remedy pois eſte in deux manners, ſc.

1 *Devant que ſoit lye per le Iuſtic. de Peace en pais, il poit doner Suretie pur le peace, in le Chancerie, en in Banco Regis, & dilonques avera Superſedeas, ut ſupra. Et donque il ne ſerra lye per les Iuſtic. de peace.*

2 *Apres que eſt lye per les Iuſtic. de peace in pais, ſemble n' ad auterremedie, mes daver Certiorari (hors del Chancery, en Banco Regis) de remover la le Recogniſance, priſe per le Iuſtic. de peace, &c. hic cap.* 71.

Now concerning the Recogniſance for the Peace. CHAP. 70.

Recogniſance.

THis Recogniſance which the Iuſtice of peace taketh for the keeping of the peace, is rather of congruence, than by any expreſſe authoritie given them. *Fitz.* 82. *e.* 7. *H.* 4. 34. *accord'.*

And this Recogniſance for the peace, if the Iuſtice of peace doth take it by force of the writ of *Supplicavit*, then he ought to execute it, and to doe in all things as the Writ directeth him. But where ſuch Writ preſcribeth not the ſumme, &c. or ſuch like, that reſteth in his owne diſcretion.

But if he take the Recogniſance *ex officio*, and by force of the commiſſion, (and ſo as a Iudge, not as a Miniſter) then it reſteth in the diſcretion of the ſame Iuſtice of P. wholly to appoint and allow the number of ſureties, their ſufficiencie in goods or lands, the ſumme of money wherein they ſhall be bound, and to limit the time how long the partie ſhall be bound, and ſuch other circumſtances. Lamb.

In the booke 7. *Hen.* 4. *fol.* 34. *a.* you ſhall finde the principall to be bound 7. H. 4.

bound in 100li. and foure ſureties, every of them in one thouſand marks before Iuſtices of Peace, and for the keeping of the peace.

3.Inſt.158. *Quare* if a Iuſtice of Peace may not examine upon their oathes the ſureties concerning their ſufficiency: it ſeemeth to bee the uſage in the Courts at Weſtminſter, and M. *Crompton* ſaith that the Iuſtices of Peace in their Seſſions may doe it. *Comp.* 194. See *his* cap. 11.

The moſt uſuall manner and ſafeſt way for the Iuſtice of Peace, is, to take two ſureties at the leaſt (and thoſe Subſidy men) beſide the party himſelfe, and to binde them by Recogniſance to the King, viz. *Domino Regi:* And it muſt alwayes be for the keeping of the peace.

Lamb. 104. And yet by the opinion of M. *Marrow* (who was in the time of King *H.7.*) a Iuſtice of Peace might have taken this ſurety by a gage pawned onely to him.

Alſo (by his opinion) a Iuſtice of Peace might have taken this ſurety by an obligation made to himſelfe, by the name of Iuſtice of Peace.

Yet if a Iuſtice of Peace had injoyned a man upon paine of xx.li. to keep the peace, this had beene nothing worth. But in this and the former two caſes and the like, this one generall ground or reaſon may bee given for all, *ſc.* that a man cannot be bound to the King, but onely by matter of record, and therefore ſuch ſuretie taken by gage or obligation, or ſuch injoyning of the peace, ſeemeth nothing worth to binde the parties.

Fitz.N.Br. fol. d. 1.Hawkins. cap. 1. *The forme.* Beſides, by the ſtatute 33. *H.8 c.39.* there is a plaine law made (in theſe and the like caſes,) which willeth that all obligations, &c. which ſhall be taken in any wiſe for the king, ſhall be made in the kings name, and by theſe words, *Domino Regi.* And if any perſon ſhall make, or take any Obligation (or Recogniſance) to the kings uſe in any other manner, he is puniſhable by impriſonment at the kings pleaſure, &c.

Marſh. 6. A Iuſtice of Peace may take a Recogniſance, and thereby may binde the party to keep the peace for one yeer, or for a longer time (by his diſcretion) yea he may bind the party during his life upon reaſonable cauſe: and this the Iuſtice may doe, either by his owne abſolute authority, or upon complaint to him made, and upon good cauſe ſhewed; as, if the offender bee a common Barretor, a Rioter, or elſe in the Iuſtices conſcience a dangerous perſon: but if ſuch ſurety be ſo taken during the offenders life, the Iuſtice of Peace can never releaſe that afterwards: and therefore the Iuſtice muſt be well adviſed how hee granteth ſuch ſuretie.

If the recogniſance be made to keepe the peace (generally) without any time or day limited, it ſhall bee conſtrued to bee during the parties life. *Lambert.* 113.

Lamb. 105. A Iuſtice of peace intending to take a Recogniſance for the Peace, and yet maketh no mention therein (nor in the condition thereof) that it is for the preſervation of the Peace, it ſeemeth to be voide, as being taken *coram non Iudice:* for a Iuſtice of peace hath no authoritie to take a recogniſance generally, but for matters concerning his office ſpecially.

Lamb. 106. If the recogniſance bee, that the partie bound ſhall not beate, nor maime *A.* yet it is not good, becauſe it ought to bee for the keeping of the peace (generally) and the peace may be broken by burning the houſe of *A.* or the like.

If the Recognisance doe not limit any time of appearance for the Conuzor, but bee generally to keepe the peace, yet it is good, for the time of appearance is referred to the discretion of the Iustice, and the chiefe scope is, the keeping of the peace. *Marrin.* *Ibidem.*

Also (by his opinion) if the Recognisance doe limit a time of appearance, but therein is no person named, before whom the party so bound shall appeare; then may hee appeare (in any place out of the Sessions, where he will) before that Iustice of Peace which tooke the Recognisance. *Ibidem.*

But in the two last cases, if a Recognisance should bee taken in such manner at this day, I should thinke it safe for the partie to appeare at the next Sessions for the peace, and there to record his appearance: See more *postea sub hoc titul.*

If the Recognisance bee to appeare before the Iustice of Peace within fortie dayes next after the date, or taking of the recognisance, and before the end of the 40. daies a generall Sessions of the peace shal be holden, &c. the partie now ought to appeare at the same Sessions. *Cromp.* 123. See the like matter, *Br. Condition* 208.

Also if these words be in the Recognisance, *sc.* that hee shall appeare before the same Iustice, *& sociis suis*, then must hee appeare at the next Sessions.

If the Recognisance be to appeare at any other Sessions after (and not at the next Sessions) yet the Recognisance is good: And yet by the statute 3. *H.* 7. *cap.* 1. it is now enacted; That every Recognisance taken for the peace, by the Iustice of Peace and *ex officio*, shall be certified (*sc.* sent or brought in) at the next Sessions of the peace, and there delivered to the *Custos Rotulorum*, that the party so bound may be there called; whereby it may seeme that every Recognisance taken for the peace now, ought to be, to appeare at the next Sessions. Cron. 15. P. Iust. 14.

If the Recognisance bee in twentie pound to bee levied of his lands onely, or of his goods onely, yet it is good, and these words (onely) may seeme voyd: for the acknowledgement of the Recognisance (before a competent Iudge) both maketh it a debt, and implieth the ordinary meanes of Law to come unto it. See hereof *postea tit. Recognisance, cap.* 123. Lamb. 19.

If the Recognisance bee to keepe the peace towards the King, and all his people, but not towards any person certaine, yet it seemeth good.

So if the Recognisance be to keepe the peace towards *A.* onely it seemeth good; or to keepe the peace towards *A.* and his servants, without being bound toward the King, and all his subjects; it seemeth good. Fitz. N. B. 80. g. Cron. 11.

But the best forme is to binde the party, to keepe the peace towards the King and all his people; for first, the words of the Commission are to finde suretie, *Erga nos & populum nostrum*; and againe the common usage is so: and besides it may otherwise proove dangerous to the party who hath cause to crave this surety of the peace; for the other party who shall give me just cause to crave this surety against him (because he will not be bound to the peace towards me) he wil perhaps pray to bind himselfe to the peace to *A.* who is his companion, and then if the Iustice of peace

peace ſhall ſo binde him, then may he and *A.* goe before another Iuſtice of P. (and that peradventure within one weeke) and there *A.* may releaſe him of the peace; and ſo (I truſting that he is ſtill bound) may be after beaten, maimed, or ſlaine by him, or by his procurement.

So then though the recogniſance being taken in any manner or form aforeſaid, may prove ſufficient to binde the partie to the King, yet peradventure it will not excuſe the Iuſtice of P. from blame, and therefore it is ſafeſt for the Iuſtice of P. to follow the received forme.

The forme of the Recogniſance for the peace, ſee *poſtea tit. Recognizance, Cap.* 123.

The Recogniſance for the peace being thus taken, if it were by vertue of the Writ of *Supplicavit*, the Iuſtice ought to returne the Writ, and to certifie (under his ſeale) his doing therein into the court from whence the *Supplicavit* proceeded; and he may alſo ſend ſuch Recogniſance (ſo taken by him) with this Certificat; or elſe he may keepe the Recogniſance in his hands ſtill, untill he ſhall receive a *Certiorari* out of the Chancery, directed to him for removing of this Recogniſance. See more *ſub hoc tit. poſtea.*

1 H. 7. ca. 1. P. Iuſt. 108. But if this Recogniſance for the peace were taken by the Iuſtice of peace *ex officio*, then the Iuſtice of P. ought to certifie (ſend or bring) the Recogniſance to the next Seſſions of the peace, ſo that the partie bound may be called thereupon; and that if the party make default of appearance, the ſame default may be then and there recorded. See 2. *H.* 7. *fol.* 1.

If a man doe forfeit his Recogniſance (either for default of appearance, or for breach of the peace) the Iuſtices of Peace may not award any proceſſe for the forfeiture thereof; but muſt certifie the Recogniſance, with the cauſe of the forfeiture, into ſome one of the Kings courts at Weſtminſter.

Lamb. 308. Hil. 13. And not that the ſaid Recogniſance it ſelfe, with the record of ſuch default of appearance, or other forfeiture, ſhall be ſent and certified into the Chancery, Kings Bench, or Exchequer, that from thence proceſſe may goe out againſt the partie: and ſo ought it to be if bee preſented by the Iury or great Enqueſt, that the party hath forfeited his recogniſance by breach of the peace. *Lamb.* 570. *Recogn. forf.*

If the Iuſtice of Peace ſhall not certifie ſuch Recogniſance (taken for the keeping of the peace) at the next Seſſions, the ſaid ſtat. 3. *H.* 7. *cap.* 1. limiteth no penaltie; and yet ſee *Brookes tit. Peace* 11. That the Iuſtice ſhall forfeit x. li. if he doe not certifie the recogniſance of the peace at the next Seſſions: but M. *Brooke* there mentioneth the ſtatute 3. *H.* 7. *cap.* 3. which ſtatute of 3. *H.* 7. *cap.* 3. was onely for baylement of priſoners, and certifying the ſame, and ſo ſeemeth to miſtake the ſtatute. *Vide Fitz.* 251. *f.*

Cromp. 169. If he which demanded the peace ſhall releaſe the peace, before the ſaid next Seſſions, then it may ſeeme though the Iuſtice of peace ſhall not certifie the Recogniſance, that the ſtatute is not tranſgreſſed or offended; for it hath beene holden that the partie ſhall not be called in ſuch caſe upon his Recogniſance: *tamen quare inde, & vide hic poſtea Cap.* 71.

but howsoever, it is better to certifie the Recognisance, for peradventure it was forfeited before the release made.

Recognisanc: removed.

Also he that demanded this surety, may by a *Certiorari*, remove such Recognisance into the Chancerie before the Iustice hath certified the same to the Sessions, and so in case the Iustice shall not certifie the same thither. *Fitz.* 81. *c.* See here *postea cap.* 73. the forme of the Iustices returne of such *Certiorari*, and of the Recognisance. 2.H.7.1. Br.Peace 11. F.t.N.B. 81.

If the Iustice of peace were deceived in the sufficiencie of the sureties, the same Iustice of peace, or any other Iustice of peace, may afterwards compell the partie to finde and put in other more sufficient sureties, and may take a new Recognisance for the same; for that the precept is, *Ad inveniendum sufficientem securitatem*. But if the sureties dye, the partie principall shall not be compelled to finde new sureties. See more *postea sub hoc tit. & postea tit. Bailement. Cap. 114.*

What thing shall discharge this Recognisance (of the peace,) or the party of his appearance at the Sessions. CAP. 71.

WHether a *Supersedeas* out of the Chancery, &c. shall discharg the party of his appearance. See *antea sub hoc tit. Cap. 69.*

Hee which is bound to the peace, and to appeare at a certaine day, he must appeare at that day, and record his appearance, although he who craved the peace commeth not in to desire that it may be continued, otherwise the Recognisance shall be forfeited. 30.H.6.M. Br. ureie 10. & Dm. 60.

And if a man bee bound to keepe the peace towards the King and all his people, but not towards any person certaine, and to appeare at such a Sessions, the Court at that Sessions may make Proclamation, That if any man can shew cause why the peace granted against such a one shall be continued, that hee speake, &c. And if no person commeth to demand the P. against him, or to shew cause why it should bee continued, then the court may discharge him. But if a man bee bound as aforesaid, and especially to keepe the peace towards *A.* there though *A.* commeth not in to desire that the peace may be continued, yet the Court by their discretion shall doe well to binde him over till the next Sessions; and that may bee, to keepe the peace against *A.* onely if they shall thinke good: for it may bee that *A.* who first craved the P. is sicke, or otherwise letted, so as he cannot come to that Sessions, to demand the continuance of the peace further: and in some places in such case, they ordinarily use to binde him over for two or three Sessions together, by order amongst themselves. Lamb. 111.

And yet by the course of the common place, one that was imprisoned for the peace (being remooved thither by a Writ of priviledge) was there discharged, for that hee which demanded the peace came not at the day (of the returne of the Writ) to pray continuance thereof. See more *antea sub hoc tit. Cap. 69.* 2.H.7.4. Br. Surety. 13.

If the Iustice of peace shall not certifie the Recognisance to the Sessions, yet the party ought to appeare, and to record his appearance. See such a matter of a Sheriffe, who tooke bond of one to appeare in the Common banke, at a certaine day, &c. although the Sheriffe returne not his

his writ, &c. yet the partie must appeare to save his bond. *Vide* 18. *E.* 4. 28. for this last case.

Com. 143. If the party that is bound to appeare, be so sicke that he cannot appeare, nor by any meanes travell at the day, yet it seemeth his Recognisance in strictnesse of law is forfeit, and so it is by the course of the Courts at West. *ut dicitur*; yet in this case upon due proofe of such his sicknesse, I have knowne the Iustices of P. (in their discretion) have forborne to certifie or record such forfeiture or default: And that they have taken sureties for the peace of some friends of his present in Court, untill the next Sessions; for that the principall intent of the Recognisance was but the preservation of the peace. But *quare* how this is warrantable by their oath; Besides, the partie so bound might (by a *Certiorari*) have removed his Recognisance into the Chancery, or Kings-Bench, before the day of his appearance, and then he should not have needed to appeare at the Sessions, for that the Iustices there should have no record whereupon to call him.

But the Civill law in such cases is more favourable: for with them the Rule is, *Citatus ad locum non tutum, non arctatur comparere*: as if the plague shall be hot in the place, or towne where the partie is to appeare, or where their Court is held, this is good excuse in their law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the partie shall be hindred, as by any great snow, inundation of waters, or by any fall, or other hurt, or sicknesse, whereby the party is in danger of death; in these and the like cases the Civill law doth dispence with defaults, referring these things, *arbitrio Iudicis*.

See M. *Brooke tit. Sauer de default.* 17. 28. 45. & 48.

If the husband be bound that he, and his wife shall appeare at such a Sessions, and that they shall keepe the peace in the meane time, &c. and, at the day the husband doth appeare, but not his wife; here M. *Cromp.* Com. 144. saith the Recognisance is not forfeit; for if there shall bee cause to continue this suretie of the peace against the husband and wife still, the husband shall be bound, and not the wife, and therefore the wives appearance seemeth not greatly materiall, *tamen quere, & Vide Fitz. Forfeiture* 17. 8. *E.* 2.

If a man be bound to the peace during his life, or generally, without *Release.* any time or day limited, in such case, neither the King, the Iu. of peace, nor the partie, can discharge this Recognisance, during the life of the 11. E. 4. 40. Lamb. 113. partie so bound, by release, or otherwise. *Br. Peace* 17.

Also it hath beene holden, that the Iustice of P. who upon his owne discretion hath compelled one to finde suretie of the peace untill a certaine day, and hath taken Recognisance for his appearing, &c. may upon the like discretion release the same before that day; and that such a release will discharge the Recognisance taken by that Iustice, if it were not forfeited before, and will also discharge the partie so bound, of his appearance: for that here all this businesse depends onely upon the discretion of the Iustice of peace who bound him. See *Fitz. Iust. de P. fo.* 9. *Lamb.* 113. & *Cromp.* 139.

Againe, it hath beene holden, if a Iustice of P. shall grant the peace at the

the requeſt of another (*ſc.* at the ſuit of *A.*) and the recogniſance bee taken to keepe the peace againſt *A.* onely, then (before the next Seſſions) may *A.* onely releaſe it (and none other:) And that releaſe being certified at the next quarter Seſſions, will diſcharge the party ſo bound, of his appearance, ſo as he ſhall not be called upon his recogniſance; for that releaſe being ſo certified, is now become of record as well as the recogniſance.

If the recogniſance were to keepe the peace *verſus cunctum populum* Br. Peace 17. *& præcipue verſus A.* yet may the ſame *A.* releaſe it: for although this may ſeeme popular, and that all others ſhould have intereſt therein as well as *A.* yet as it appeareth by the word *Præcipue*, it was eſpecially taken for his ſafetie: but the contrary was holden by all the Iuſtices, 21. *E.* 4. 48. *ſc.* that the partie at whoſe ſuit the ſame was granted, cannot releaſe the ſame. And M. *Lam.* alloweth beſt of that opinion; nevertheleſſe, Lamb. 114. the uſage now is, and long hath beene, as is aforeſaid, as appeareth by M. *Brooke tit. Peace.* 17.

But (in theſe former caſes) although this ſuretie of the peace be releaſed, and the parties agreed, yet the recogniſance ſhall not bee cancelled by the Iuſtice of Peace, for peradventure the recogniſance was forfeited before ſuch releaſe made; And therefore the Iuſtice of Peace ſhall doe beſt, nay ought, to certifie ſuch recogniſance, with the releaſe, together the next quarter Seſſions.

The forme of the releaſe of the Iuſtice of peace. See *poſtea tit. Releaſe cap.* 128.

The forme of the releaſe of the partie. See *ibid.*

Note it hath beene holden that the party that firſt demanded the peace might releaſe the ſame before the ſame Iuſtice of peace that tooke the recogniſance, or before any other Iuſtice of peace.

Note alſo that to releaſe ſuch ſuretie of the peace, by deed under his hand and ſeale is nothing worth.

But yet it is now holden, that neither the Iuſtice of Peace, nor the party, can diſcharge the recogniſance of the peace by their releaſe out of the Seſſions: for firſt the Recogniſance is made to the King, and therefore none but the King can releaſe or diſcharge the ſame. Secondly, the recogniſance is taken for the appearance of the partie, &c. (as well as for his keeping of the peace) and the releaſe of the Iuſtice or of the partie, cannot diſcharge the appearance of the partie bound. And therefore notwithſtanding that the Iuſtice of peace out of Seſſions ſhall make or take any releaſe of the Peace, yet it ſhall bee ſafe for the partie bound to appeare for the ſafeguard of his recogniſance. And upon the Certificat made by the Iuſtice of Peace to the Seſſions of ſuch releaſe, the Conuſor ſhall be there diſcharged, (at leaſt) againſt the party who firſt craved the Peace.

And in truth the appearance of the party bound ſeemeth requiſite notwithſtanding any releaſe made, firſt for the ſafeguard of his recogniſance, as aforeſaid: ſecondly, that others may object againſt him in the open Seſſions, if he hath in any ſort broken the peace, ſo as hee may bee there indited upon the ſame, &c.

Note

Note alſo, the King can in no caſe releaſe or pardon the ſurety of the peace, nor ſuch Recogniſance (taken in the behalfe of any of his ſubiects) untill it bee forfeited, for the miſchiefe that may come to the partie thereby, but being forfeited, then the king and none other may releaſe and pardon the forfeiture.

1.H.7.1. 8.Peace 15 8.Cor.21. But the death or reſignation of the King diſchargeth this ſurety of the peace, taken by his ſubiect: for the Recogniſance is to keepe the peace of the king (then being) and when he is dead, &c. it is not his peace. *Br. Suretie* 20. *Death.*

Lamb.116. Alſo the death of the Recogniſor (*ſc.* of the party principall that is bound) diſchargeth this ſurety of the peace and the Recogniſance. See 21.*E.*4.70 & 15.*H.*7.2.& 13.

Lamb.116. Alſo the death of the partie, at whoſe ſuite the peace was taken diſchargeth the recogniſance if it were to keep the peace againſt him alone.

But yet in theſe three former caſes, ſuch death ſhall not diſcharge the Recogniſance if it were forfeited before: and therefore it ſhall be beſt for the Iuſtice of peace to ſend to the next Seſſions, ſuch Recogniſance, notwithſtanding ſuch death, elſe the king may be defrauded of a forfeiture, if any were before.

21.E.4.40. 8.Peace 27. The death of the ſureties ſhall not diſcharge the Recogniſance, neither ſhall the party principall bee compelled to finde new ſureties after their death; for if the peace be broken, after their deaths, their executors ſhall be charged therewith; and ſo there is no miſchiefe by their deaths: yet *alii è contra ibidem, ſc.* that the principall ſhall be compelled to finde new ſureties.

21.E.4.40. 10.H.7.22. 8.Peace 22. If the King and the Recogniſor bee at iſſue upon the breach of the peace, and the king waives the iſſue: yet is not this Recogniſance diſcharged, but remaineth in force, and may bee ſued againe upon a new breach of the peace afterwards.

What act ſhall be (or makes) a forfeiture of the Recogniſance taken for the Peace. CHAP. 72.

Lamb.117. WHatſoever Act is a breach of the Peace, the doing, threatning (or intending) thereof againſt the perſon of another being preſent, is a forfeiture of this Recogniſance.

21.E.4.28. 8.Peace 16. And therefore firſt this breach of the Peace may bee committed by uſing any fearefull or threatning ſpeeches to the perſon of another: therefore all menacing or threatning to kill, or beate another, to his face, is a forfeiture of this Recogniſance; otherwiſe if the partie ſo threatned, be abſent. And yet if the partie ſo bound, ſhall threaten to kill or beat *A.* who is abſent, and after ſhall lie in waite for him to kill, or beat him, this is a forfeiture of his Recogniſance, without any threatning, affray or affray to the perſon. 22.*E.*4.35. *Cromp.*135.

So aſſaults, *ſc.* to ſtrike at, or offer to ſtrike at a man, although he never hurt, or hit him, this is an aſſault, 22. *Aſſ. Pl.*60. And is a forfeiture of this Recogniſance: ſee *Cromp.*137.*b.*& 40.*E.*3.*fol.*40.

Much more all affrayes, or violent and malitious batteries, ſtrikings, beatings, woundings, or other miſ-intreatings of the perſon of another

then, are forfeitures of this Recognisance.

The difference of these three, are, menacing beginneth the breach of the peace, assaulting increaseth it, and battery accomplisheth it.

Of thus a Battery is the wrongfull beating of another. *Fi.*

Assault, is when one unlawfully sets upon the person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not. *ibidem.*

Hither also belongeth lying in waite, besetting his mansion house, and not suffering his servants to goe in and out, &c. *Fi.*

Menaces, are threatning words, to beat another, or the like, for feare whereof he dares not goe about his businesse *ibid.*

For breaches of the peace without word, or blow given, as to goe with weapons, or company unusually, which be in *effrey del pais, see pag. seq.*

If hee that is bound doe but command or procure another to breake the peace, and that it be done indeed, this is a forfeiture of this recognisance. *Fi.*

All false imprisonment, or arresting of another without warrant, is a forfeiture of this recognisance. Now false imprisonment is any unlawfull restraint of Libertie. *Fi.* Lamb. 130.

So to thrust another into the water, whereby he is in danger of drowning, is a forfeiture of this recognisance.

So to ravish a woman against her will.

So to commit burglary, robbery, murder, or manslaughter (all which are to the perill of another) or to procure the same, all and every of these are forfeitures of this recognisance.

So to doe any treason against the person of the king, this is a breach of the peace, and a forfeiture of this recognisance: for although the words of the recognisance usually be, *Quod gerit pacem erga cunctum populum Domini Regis, & præcipuè erga A. B.* (and is not *erga ipsum Dominum Regem, & cunctum populum, &c.*) yet because this fact is done against the head of the body of the whole Realme, it is to be adjudged a prejudice and hurt, *ad cunctum populum*, and a breach of the Peace in the highest degree.

But note that the act which must make a forfeiture of a recognisance for the peace must be done or intended to the person of another, by the opinion of M. *Marrow.* And the booke of 2. *H.* 7. importeth as much, saying that this surecie of the peace is not broken without an affray, fighting, hearing, or the like. Mar. Lamb. 127. 2. H. 7. 2. b.

And yet to bee riotously assembled, is a breach of the peace, and a forfeiture of this recognisance, for that it is *in terrorem populi.* Nay, if two Justices of peace shall record a Riot upon their view (against a man so bound to the peace) although it were no Riot, &c. yet hee cannot plead not guilty in a *Scire facias* upon his recognisance. Mar. Lamb. 311.

Also to weare armor, or weapons not usually worne, or to goe with an unusuall number of attendants, seeme also to bee a breach or meanes of breach of the peace, and a forfeiture of this recognisance for the Peace, for they strike a feare and terror in the people, and be in *effrey del pais.* See *Br. Surtie* 12. *& hic cap.* 74.

He

He that is bound to the peace ought to carry himſelfe well in his behaviour, and company. See *antea ſub hoc tit. Et poſtea tit. Suretie for the good behaviour.*

Yet the having of weapons or company unuſuall, are in ſome caſes allowed, and lawfull, and are no breach of the peace. See hereof *poſtea tit. Poſſe Comitatus, & poſtea tit. Ryots.*

Alſo though aſſaults and batteries be for the moſt part contrary to the peace of the Realme, & the Lawes of the ſame, yet ſome are allowed to have a naturall, & ſome a civill power (or authority) over others; ſo that they may (in reaſonable and moderate manner onely) correct & chaſtiſe them for their offences, without any imputation of breach of the peace; yea they may (by the Law) juſtifie the ſame; and ſo in ſuch caſes the beating or battery of the perſon of another, maketh no breach of the peace; but the manner of the battery onely doth make the breach of the peace. *Battery juſtifiable.*

And therefore the parent (with moderation) may chaſtiſe his childe within age.

So may the Maſter his ſervant, or apprentice, for their evill ſervice.

So may the Schoole-maſter his ſchollers.

So may a Gaoler (or his ſervant by his commandment) his unruly priſoners.

Hom. 18. So may any man his kinſman that is madde, &c. And none of theſe ſhall be in perill therefore to forfeit any recogniſance of the peace.

Affeking. 2 Note that the maſter may ſtrike his ſervant with his hand, fiſt, ſmall ſtaffe, or ſtick, for correction; & though he doe draw bloud thereby, yet it ſeemeth no breach of peace, as appeareth by the ſtatute of 33. *H.* 8. *cap.* 12.

And where the ſervant ſhall be negligent in his ſervice, or ſhall refuſe to doe his worke, &c. there the maſter may chaſtiſe his ſervant for ſuch negligence or refuſall; ſo as he doth it not outragiouſly.

5 H. 6. 25. Rafe. Imp. 37 But if the ſervant ſhall depart out of his Maſters ſervice, and the M. happen after to lay hold of him, yet the Maſter in this caſe may not beat or forcibly compell his ſaid ſervant againſt his will to returne, or tarry with him, or doe his ſervice; but either he muſt complaine to the Iuſtices of peace for his ſervants departure; or he may have an action againſt his ſervant, if being required to doe his ſervice he ſhall refuſe it. See *antea tit. Laborers.*

5 Ed. 4. 5 Labor. 6.

5 H. 6. 25. And as the M. without the breach of the peace, cannot by beating or force, compell his ſervant to ſerve him againſt his will: no more can a Lord, or Gardian in chivalry, compell his ward, by beating, or by force to come unto him, or to tarry with him againſt his will.

21. Ed. 4. 6. Lib. Intr. 613 Alſo the ſchoole-maſter, with a rod, may chaſtiſe his ſcholler which is careleſſe and negligent in learning, or that ſhall abuſe his ſchoole-fellowes, or for other the like occaſions.

21. E. 4. 43. 22. aſſ. p. 56. Alſo it is lawfull for the parents, kinſmen, or other friends of a man that is madde, or frantike (who being at libertie attempteth to burne an houſe, or to doe ſome other miſchiefe, or to hurt himſelfe, or others) to take and put him into an houſe, to bind or chaine him, and to beat him with rods, and to doe any other forcible act to reclaime him, or to keepe him ſo as he ſhall doe no hurt. *Br. F. imp.* 35.

Alſo

An officer. Also if a Constable, Sergeant, Bailife, or other Officer of Iustice, or any other being of their company, for the better executing of their office, shall be forced to strike any person that will not yeeld to their arrest, or that shall resist, or flie from their arrest, they shall not be in any danger to forfeit any Recognisance of the peace by any such assault, or striking, but may well justifie such act. Lib. Int. 612. Stamf. 13.14. 21. H. 7. 39.

In defence of any person. Also it is no breach of the peace, for any private man to beat, strike, or wound another, in defence and safegard of his owne person, from killing, wounding, or beating, but is a thing justifiable. And In an action of Trespas *de Assault et Battery*, the def. may pleade, *Defon Assault demesme. sc. que il fait ceo in defence luy mesme, encounter le assault del playntiffe &c.* And yet by others, if another shall assault me, if I may escape with my life, or without being wounded, maimed, or hurt, it is not lawfull for me to beate or wound the other, who first made the assault, but I must first flie, or goe from him so farre as I can. 25. *E.* 3. 42. 2. *H.* 4. 8. 33. *H.* 6. 18. *Br. Tres* 28. 71. *Cro.* 137. *hic cap.* 78. Lib. Int. 611. 16. E. 4. 11. 12. E. 4. 6.

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.
Non ad sumendam vindictam, sed ad propulsandam injuriam. Co. L. 162.

By the Civill law he shall not be said to have done a wrong, who incontinently for his safegard, after the same manner whereby he is assaulted, doth defend himselfe; as when a man is assaulted by weapons, he may resist with weapons: but if he doe exceed measure in repelling an injury, as if being wronged in words, he shall resist with weapons, and by such resistance doe beat or wound the other partie, he which is so beaten or grieved may have his action, and shall recover damages, &c.

And to prescribe some temper and moderation in the resisting of verball, or actuall injuries; one hath these Verses:

Res dare pro rebus, pro verbis verba solemus,
Pro buffis, buffas, pro trufis reddere trufas.

Things must be recompenst with things, buffets with blowes,
And words with words, and taunts with mockes and mowes.

If two or more doe agree together to play at Barriers, back-sword, Bucklers, Foot-ball, or such like, and one of them doth wound or hurt another, the partie hurt shall not have an action of Trespasse therefore against the other, for that it was by consent, and to try their valour, and not to breake the peace. *Fitz. Barr.* 244.

Yet if such a man were before bound to the peace, such act seemeth to be a forfeiture of his Recognisance. See *Br. Cor.* 229. for although such sports be suffered, yet they are not lawfull. Lamb. 131.

In defence of others. Also it is no breach of the peace, for a man to beat him that doth assault and would beat, wound, or evill intreat his wife, father, mother, or master, but is justifiable.

So if the wife shall beat him that shall assault, and would beat or evill intreat her husband.

So if the father or mother shall beat him that doth assault, and would beat or evill intreat their child, being then within age, and not able to defend it selfe.

But though the servant may lawfully beat him that doth assault and would

would beat, or evill intreat his Maſter or Miſtreſſe: yet the ſervant cannot juſtifie the beating of another in defence of the father, mother, brother, ſiſter, ſon, or daughter of his maſter or miſtreſſe, for he oweth no obedience or duty to any of them. See *Fitz. Bar.* 73. & 102.

P.R.5. P.Iuſtiſ.3 By ſome opinions the Maſter cannot juſtifie the beating of him that doth aſſault, and would beat his ſervant: but the maſter with a ſword, ſtaffe, or Lamb.132 Crom.136 other weapon may defend his ſervant aſſaulted, from being beaten, in reſpect of the loſſe of his ſervice. Yet M. *Lambert*, and M. *Crompton* are of opinion that the Maſter may beat another in defence of his ſervant; but 9. E.4. *Fitz. Barre* 102. *contra.*

Lamb.132 Neither can the Fermour or tenant juſtifie ſuch an act in defence of his Land-lord; nor a Citizen, &c. in defence of the Major (or Bailiffes) of the City, or Towne corporate where he dwelleth.

And yet where the life of any perſon is in danger by beating of another, there any ſtranger may lawfully reſiſt it, and that with force, and beating of him which offereth ſuch violence, *Vide* 12.H.8.2.b. *hic cap.* 78.

9.E.4.28. 19.H.6.31 65. 15.Int. 611. Alſo the Law doth tolerate a man to beat another for the preſervation of his goods: And therefore he that ſhall attempt by force and violence to take away my goods wrongfully from me, whether they be goods whereof I have a lawfull property, or ſuch goods whereof I have onely a poſſeſſion by the bailement of another; I may juſtifie to defend the ſame by force, and if I ſhall hurt or beat ſuch perſon, it is no breach of my Recogniſance for the peace, yet if I ſhall wound him by ſuch beating, that is not juſtifiable: but if I kill him, it is felony; and in both theſe laſt caſes it is a breach of the Recogniſance. See *hic cap.* 78. *In defence of my goods.*

If another man will take away my goods, I muſt firſt lay my hands upon him and diſturbe him, and if he will not leave, then I may beat him rather than he ſhall have or take away my goods. *Fi.*

10.Ed.4.8 3.H.4.9. 11.H.6.33 The ſame law is in every caſe where another ſhall attempt by force to take away or to put me out of poſſeſſion of my Land, Freehold, Copyhold, or Leaſe; or to ſtop or turne my lawfull Highway, or my ancient river, or water-courſe leading to my Mill; in theſe and the like caſes if I ſhall diſturbe him therein, whereupon he doth aſſault and attempt to beate me, I may juſtifie to beat him againe, as well in defence of my perſon, as of my poſſeſſions, but not to kill him.

The ſame law is alſo in every caſe, where an offendor is by order of law punished with whipping, ſtocks, pillory, or otherwiſe, for any offence by him committed contrary to the lawes or ſtatutes of the Realme, there is no peace broken, nor any recogniſance of the peace forfeited by him or them which ſhall lawfully execute any ſuch puniſhments. *In execution of juſtice.*

Note further, that there are diverſe things which may be done againſt the Lamb.132 peace, and divers offences, for which an Enditement *contra pacem* will lie, and yet the committing or doing of ſuch offence or act, ſhall be no forfeiture of the Recogniſance for the peace, for that the act that ſhall breed a forfeiture of ſuch a Recogniſance, muſt be done or intended unto the perſon, as aforeſaid, or *in terrorem populi.*

Therefore to enter into lands, where he ought to bring his Action, or to diſſeiſe another of his lands:

Mar.lect.7 Or to enter into lands or tenements with force, being without offer of violence

violence to any mans perſon, and without publike terrour. *Cromp.* 136.

Or to doe a treſpaſſe in another mans corne or graſſe:

Or to take away another mans ward:

Or to take away another mans goods wrongfully, ſo it be not from his perſon.

Or to ſteale another mans horſe, or other goods felonioufly, being not from his perſon: Ibid.

All theſe, and the like be breaches of the peace, and yet theſe will make no breach of this Recogniſance; nor breach of the peace within the meaning of the commiſſion of the peace.

Note, that if a man be bound in ſuch a Recogniſance for himſelfe and his ſervants, if any one of them breake the peace, the whole Recogniſance is forfeited. *Et ſic in ſimilibus.* 4.H.7.f.

Note alſo, that the ſureties may pleade, that the party principall hath not broken the P. although upon iſſue the ſame ſhall be found againſt the ſaid principall; for they are ſtrangers thereunto. *Fitz, Averment.* 46.

Now concerning the Writ of Supplicavit. Chap. 73.

THe formes of this Writ, out of the Chancery, are of divers ſorts, as you may ſee, *Fitz.N.B.* 80. *d. & Regiſter* 89.

By which formes of the Writ, it appeareth, that it may be directed to the Iuſtices of peace, or to one of them; or to the Sherife, or to every of them, to cauſe the party that is to be bound, to come before him or them, to finde ſurety of the peace. And this Writ may be that the principall ſhall be bound in ſuch a ſumme, and the ſureties in ſuch a ſumme certaine, (and that may be in what certaine ſummes the demandant will:) or the ſummes may by the Writ be referred to the Iuſtice of peace, &c. with this clauſe therein contained, *pro qua reſpondere voluerit*: and the ſaid Writ is further, that if the party ſhall refuſe, &c. that they ſhall commit him to the gaole, *quouſque*, &c. and that when they have taken ſuch ſurety, they doe certifie the Recogniſance (which they have ſo taken) under their ſeales, and returne the Writ into the Court from whence the ſame was awarded, and that without delay.

And for that this Writ is of divers formes, the Iuſtice of peace muſt have a care that he doe execute the ſame in every behalfe, as the ſame Writ ſhall direct and appoint him.

When the Writ doth referre the ſumme (wherein the principall, and his ſureties ſhall be bound) to the Iuſtices, &c. then it reſteth in their diſcretion; but yet it is then ſafe for them to take good ſureties, and to binde them in good ſummes; and the rather when that clauſe is in the Writ, *pro qua reſpondere voluerit.*

When this Writ is directed to the ſherife, and to all the Iuſtices of peace of that County, and is delivered to any one of them, hee onely to whom it is firſt delivered, ought to execute the ſame Writ (in every behalfe) ſc. hee onely ſhall make a warrant, &c. returnable before himſelfe, and he onely ſhall take ſureties, and make returne thereof (onely) without any other. 21.H.7.10 Br. Peace 81

The forme of a warrant for the peace upon a *Supplicavit*: ſee *poſtea tit. Warrants, cap.* 121.

Alſo the ſame Iuſtice of peace after ſuch ſurety taken, may make the party a *Superſedeas*

Superſedeas to diſcharge him from any other arreſt; or to deliver him being in priſon for the peace, (at any other mans ſuit, as it ſeemeth.) *Crompt.* 237. *b.*

The forme of ſuch *Superſedeas*, ſee after, *tit. Preſidents. cap.* 122.

11. H. 7. Br. peace 9. The party who is attached upon this Writ of *Supplicavit*, cannot goe to be bound before any other Iuſtice of peace, but only before him from whom the warrant proceeds upon this writ; neither can another Iuſtice of peace (by a *Superſedeas*) diſcharge ſuch a warrant made by his fellow Iuſtice, by force of this Writ.

9. E. 4. 32. F. N. B. imp. 4. The Iuſtice or Sheriſe, to whom this Writ ſhall be delivered, may make a deputy herein; *ſc.* may make his warrant to the Bailife, Conſtable, or other perſon indifferent, to apprehend the body, or to cauſe the party to come before him (the ſaid Iuſtice or Sheriffe) to find ſureties, *&c.* And that if he ſhall refuſe, that then the Conſtable, *&c.* ſhall carry him to priſon, there to remaine untill he ſhall find ſureties; and yet the writ of *Supplicavit* is to commit the party to the Gaole, if he ſhall refuſe before the Iuſtices (*Si coram vobis, vel te, recuſaverit, &c.*) But the Iuſtice or Sheriſe cannot give their power to another, to take this ſurety; for that is a judiciall power, which cannot be aſſigned over: neither can they make any deputy therein; but they muſt take this ſurety themſelves: and the Bailife, or Conſtable who apprehended the body, cannot take this ſurety. *Br. office* 39. *& fx. imp.* 34.

If the party ſhall make reſiſtance upon the execution of this writ, the officer may take *poſſe comitatus, ſc.* the helpe of his neighbours, to aide him to arreſt ſuch party: ſee *poſtea tit. poſſe comitatus.* or elſe the ſaid Iuſt. may make his warrant to the Sheriſe to apprehend the party, and upon reſiſtance the Sheriſe may take *poſſe comitatus*, to arreſt the party.

F. N. B. 80. d. He that is to be bound to the peace by force of this Writ of *Supplicavit*, out of the Chancery, is to be bound againſt him onely that ſueth out the Writ, as appeareth by the forme of the Writ aforeſaid.

But yet at this day it is uſed otherwiſe: and I once received out of the Chancery a ſpeciall Writ of *Supplicavit*, directed *Cuſtodibus pacis, ac vic. & eorum cuilibet*, commanding us to take ſureties of the party to be bound, *quod ipſe damnum vel malum aliquod alicui de populo noſtro, & imprimis eidem Iob. &c.* (that ſued out the writ) *non fac. nec fieri procurabit, &c.*

F. N. B. 80. d. Alſo by this Writ of *Supplicavit*, the party (againſt whom the Writ is ſued forth) ſhall bee bound to the peace for ever (if he be taken;) for the writ containeth or mentioneth, not that hee ſhall bee bound to keepe the Peace untill any certaine time; but generally (*ad ſufficientem ſecuritatem inveniend. ſub pœna, &c.*) And therefore to prevent this, the party (before he be attached) may come into the Chancery, and there finde ſureties, and bee found untill a certaine day, that hee ſhall doe no hurt, &c. unto the party that ſued forth the *Supplicavit*; and thereupon hee ſhall have a *Superſedeas* out of the Chancery, directed to the Iuſtices of peace, and to the Sheriſe (or to one of them) commanding them to ſurceaſe to arreſt the ſaid party, or to compell him to finde any ſureties, &c. And that if they have arreſted or impriſoned him for this cauſe, and none other, that then they deliver him, &c. *Fitz.* 181. *A.* The forme of the *Superſedeas*, ſee *Regiſter*, 89.

And if the party againſt whom this Writ is ſued forth, cannot travell,

(or elſe will not travell) to binde himſelfe in the Chancerie, then hee may cauſe ſome of his friends to be bound, or to find ſureties in the Chancery for him, according to the *Supplicavit*, and thereupon they may purchaſe a *Superſedeas* out for him, directed to the Iuſtices of Peace and to the ſherife, and by this *Superſedeas* the Iuſtices and the ſherife ſhall be commanded to take alſo ſurety of the party himſelfe in the country (according to the writ of *Supplicavit*) that hee ſhall keepe the peace, *&c.* F. N. B. 312. Crom. 142.

Alſo if the party happen to be arreſted, and impriſoned upon this Writ, yet if hee can procure a *Superſedeas* out of the Chancery, it ſeemeth (by the words in the end of the *Superſedeas*) that this will diſcharge him of the arreſt, or impriſonment.

Now after the party is arreſted and impriſoned (upon this Writ) the meanes for him to procure a *Superſedeas* out of the Chancery, muſt be;

1 Either to get ſome of his friends to be bound in the Chancery for him, and they to get a *Superſedeas ut ſupra.*

2 Or elſe to get a Certificat to the Lord Chancellor, from three or foure Iuſtices of peace in his behalfe, ſignifying, that the party plaintiffe never demanded the peace in the country; and further that the plaintiffe is a contentious man, and the other party of good fame: and upon ſuch certificat (*dicitur*) they will either diſcharge the party, or elſe grant him a *Superſedeas.* Fitz. N. B. 79. h. Lamb. 16.

This Writ of *Supplicavit*, is granted (or may be granted) in the Chancery, or Kings Bench, upon great cauſe ſhewed and proved there, and is (or ought to be) granted upon oath, that the party is in feare, *&c.* of ſome bodily hurt, *&c.*

But this Writ of *Supplicavit* hath heretofore oftentimes beene procured and gotten out rather of malice and for vexation, than upon any needfull or juſt cauſe: And Sir *Edward Coke* ſpeaking of ſuch as maliciouſly ſhall purchaſe out any ſpeciall *Supplicavit*, or *Latitat* of the peace, (and that by fraud and malice to inforce the other party *ad redimendam vexationem*, to give them money, or to yeeld them other compoſition) brandeth them as Barretors, and notable Oppreſſors of their neighbours, oppreſſing thereby the poore and innocent by colour and countenance of Law, which was ordained to protect the innocent from all oppreſſion and wrong. Neither was this a wrong only to the party thus maliciouſly vexed, but alſo to all the Iuſtices of peace reſident in that Country, taxing them (*tacite*) as though the demandant could not have juſtice at their hands in ſuch caſe, whereas perhaps the demandant never ſo much as deſired the ſame at any of their hands. And beſides, the ſaid Iuſtices of peace (having in all likelihood, knowledge of each party, and their behaviours) or any one of the Iuſtices of Peace, might and would no doubt, yea and ought to have yeelded the demandant, upon requeſt and juſt cauſe ſhewed to them, as ſufficient and good ſecurity in the countrey, every way (as I conceive it) for his ſafety, as namely, as many and able ſureties, and better knowne, and to have beene bound in as great ſummes, and for as long time if the caſe ſhould ſo require. So as what ſhould move them to ſeeke (with more trouble, charge, and delay to themſelves) that ſecurity above, which they may have (more ſpeedily, and with leſſe charge and trouble) at home; I ſee not, but onely or chiefly the vexing and oppreſſion of their neighbours, as aforeſaid. Cr. 3. 176. See more before in this title.

said. And for that this manner of oppression grew over common, therefore by the stat. made. 21. *Iac. cap.* 8. it is now enacted, that all Processe of the peace, Or good behaviour to bee granted out of the Chancery, or Kings Bench, against any person whatsoever, at the suit of any other, shall be void, unlesse such Processe shall be granted upon motion first made before the Iudge, or Iudges of the same Court, sitting in open Court, and upon declaration in writing upon oath then exhibited, of the causes for which such processe shall be granted; and unlesse that such motion and declaration be mentioned to be made upon the backe of the Writ (the same writings to be there entred of Record.) And if after it shall appeare to the said Courts, that the said causes expressed in such writing be untrue, then the Court may award costs and dammages to the party grieved, and may also commit to prison the offendors, untill they pay the said costs and dammages.

Now to conclude this businesse: If the surety of the peace be taken by vertue of a *Supplicavit*, then must the Iustice of peace make returne of the Writ, and certificate of his doings under his seale into the Court from whence the *Supplicavit* did proceed; which may be done in this manner:

First let him write upon the backe of the *Supplicavit*, thus:

Executio istius brevis patet in quadam sebedula huic brevi annexa.

Then may the Certificate or Schedule bee thus, and bee filed to the backe of the Writ. *The returne of the Supp.*

EGo Iohannes Cotton miles, unus Custodum pacis Dom' Regis in Comit' Cantabrigia certificoin Cancellariam dicti Domini Reg. me virtute istius brevis (mihi per A. B. in eodem brevi nominatum, primo deliberat.) personaliter coram me (tali die & loco) venire fecisse T. R. in dicto brevi nominatum, & eundem T. ad sufficientem securitatem, & manucaptores pacis invenienda secundum formam dicti brevis, viz. &c. (as the Writ shall appoint,) *compulisse: In cuius rei testimonium huic praesenti certificationi meae sigillum meum apposui, datum apud C. praedictum, in Comitatu praedicto, 16. die Ianuarii, anno regni dicti Domini nostri Caroli Dei gratia regis, &c.* *The Certificate.*

The Iustice of peace may also therewith send the Recognisance, if hee will; or may keepe and stay the Recognisance untill a *Certiorari* come to him for it. *The returne of a Certiorari.*

And if a *Certiorari* bee directed out of the Chancery to the Iustice of peace, for removing of this Recognisance (because it was not sent up together with the Certificate, as there was no necessity that it should) then that Writ also may be thus answered. *And of the Recog.*

Write upon the backe of the *Certiorari* thus.

Lib. Intr. 453. *Virtute istius brevis ego* Ioh. Cotton *miles unus custodum pacis Dominirobis in Com' Cantabr'. tenorem securitatis pacis, de qua in hoc brevi fit mentio* (Or *unde infra fit mentio*) *dicto Dom' Reg. in Cancell' suam sub sigillo meo distincte & aperte mitto, prout patet in Sebedula huic brevi consuta.*

And then Write the recognisance *verbatim*, in this manner hereunder following, and thereto set your seale. *The sebedule or Certificate.*

Memorandum quod 16. die Ianuarii, &c. (reciting the whole recognisance to

to the end) *In cujus rei teſtimonium ego prædictus* Iohan. Cotton *ſigillum meum apposui. Datum*, &c.

And file this ſchedule (or note of the recogniſance) to the backe of the *Certiorari*.

The forme of the *Certiorari* you may ſee *F. N. B.* 81. *c. Vide poſtea*; *tit. Certiorari. cap.* 134.

Alſo this forme of certificat may ſerve where a *Certiorari* is brought to a Iuſtice of Peace to remove a recogniſance of the peace, taken by him *ex officio*, without any Writ of *Supplicavit*. See more *antea ſub hoc tit. Suretie*, &c. F.N.B. 81.

And if the Iuſtice of peace ſhall not returne the *Supplicavit*, nor certificate of his doings therein, untill a *Certiorari* come to him for it, yet it ſeemeth no danger to him. F. N. B. 81. b.

Release. Alſo if the *Supplicavit* be againſt diverſe, and the demandant will releaſe his prayer of the peace againſt one of them, then that releaſe ought to bee certified for him, and the writ muſt bee ſerved and executed for the reſt: or elſe, *Non eſt inventus*, may be certified for him, and the writ executed for the reſt. 2. Inſt. 141.

By the booke 30. *Aſſiſarum plac.* 14. it appeareth, that a man may bee compelled to finde ſureties both for the good behaviour, and for the peace; for there one that had beaten a woman in Weſtminſter Hall, was bound to the peace towards the woman, and was alſo bound to the good behaviour towards the King, *&c.*

And ſo where one ſhall ſtrike another in the preſence of the Iuſtice of peace, the Iuſtice may binde him to the peace, and alſo to the good behaviour. *Cromp.* 140.

So where one comming to the Seſſions to preferre a bill of indictment or about a Traverſe to be tried there, &c. if he ſhall be aſſaulted, or threatned, &c. the Iuſtices may binde the offendor to the peace, towards the party, and to the good behaviour for ſuch contempt to the King and the Court. *Cromp.* 141.

And yet it ſeemeth that the good behaviour includeth the peace, and that he that is bound to the good behaviour, is therein alſo bound to the peace. See the uſuall formes of both Recogniſances, *& hic poſtea.* Br. Surety 11. 2. H. 7. 2. b.

But if the Recogniſance taken for the good behaviour, be only *quod bene ſe geret*, *&c. Quære* how farre theſe words will extend. See 2. *Hen.* 7. 2. *b.* where the Iuſtices held that the good behaviour may bee forfeited by the number of his people, and by the harneſſe (or weapons,) and the like, although they breake not the peace; And they thought that he which is bound to the good behaviour, ought to carry and demeane himſelfe well in his apport, and in his company not doing any thing which ſhall be cauſe of breach of the peace, or to put the people in feare, dread or trouble; and ſo ſhall bee intended of all things which concerne the peace, but not in miſdoing of other things, which touch not the peace. See *hic poſtea.*

Surety for the good behaviour. CHAP. 74.

THis ſurety for the good behaviour, or good abearing, is granted by the Iuſtice of Peace, as well by authority of the Commiſſion of the P. 1. c. 18.

peace

peace, the firſt of *Aſſign.* as alſo by force of the ſtat. of 34. *Ed. 3. cap.* 1.

And this ſurety for the good behaviour is of great affinity with that of the peace, and is provided and ordained chiefly for the preſervation of the peace (as that other is,) as you may obſerve out of the uſuall formes of the recogniſances; yea, by ſome opinions it differeth in little or nothing from that of the peace; but that there is more difficulty in the performance thereof; and the party ſo bound may ſooner fall into the danger of it, and of his recogniſance. For the peace (ſay they) is not broken without an affray committed, battery, aſſault, imprifoning, or extremity of menacing; whereas the good abearing may be broken, and the parties Recogn. forfeited without any of theſe, as namely,

Lamb. 219 P. R. 2.

Lamb. 219 P. R. 18.

8 H. 7. 2.

1 By the extraordinary number of the people attending upon the party bound. See *hic cap.* 72. & 73.

2 Or by his wearing of harneſſe, or other weapons, more than uſually he hath done, or more than be meet for his degree. See *ibid.*

P. R. 18.

3 Or by uſing words or threathings, tending or inciting to the breach of the peace.

4 Or by doing any other thing which ſhall tend to the breach of the peace, or to put the people in dread or feare, although there bee no actuall breach of the peace.

Yet note, theſe foure laſt matters, as they are the breaches of the good abearing, ſo are they alſo cauſes to binde a man to the peace; yea, they are breaches of the peace, and a forfeiture of the recogniſance for the peace, *Vide tit. Surety for the Peace, cap.* 72.

The book 2. *H.* 7. *fol.* 2. before recited concludeth, that the Iuſtices were not all certainly adviſed how thoſe words, *de ſe bene gerendo*, ſhould be taken: M. *Bro.* abridging thereof *tit. Surety*, 12. ſaith, That it was holden that hee who is bound to the peace, ought to demeane himſelfe well in his port, (*ſc.* Behaviour) and company, not doing any thing that may bee the cauſe of the breach of the peace, or to put the people in feare or trouble; yet the booke ſeemes to meane this of the good behaviour. See *Fitz. Surety* 21.

But though this extraordinary number of attendants, and wearing of harneſſe, &c. are breaches as well of the peace, as of the good behaviour, yet it may ſeeme that this for the good behaviour, doth include the P. and beſides importeth ſome greater or other matters of misbehaviour, and for which the ſurety of the peace is not to be granted, (although they alſo are againſt the P. and quiet or good governement of the land;) and you ſhall finde *hic cap.* 75. that this ſurety of the good behaviour is grantable in diverſe other caſes, in which the ſurety of the peace is not grantable.

This ſurety of the good behaviour is to be granted at the ſuit of divers, and thoſe being men of credit, and to provide for the ſafety of many; whereas the ſurety of the peace is uſually granted at the requeſt of one, and for the preſervation of the peace chiefly towards one.

Alſo this ſurety of good Abearing, is moſt commonly granted either in open Seſſions of the peace; or out of the Seſſions, by two or three Iuſtices of peace; whereas that of the peace is uſually granted by one Iuſtice of peace, and out of Seſſions.

14. H. 7. 8. Lamb. 224

And yet by the words of the Commiſſion, as alſo by the common opi-

nion

nion of the learned, any one Iuſtice of peace alone, and out of the Seſſions, may grant this ſurety of the good Abearing (and that either by their owne diſcretion, or upon the complaint of others) as they may that of the peace. 14. H. 7. 2. a. Lamb. 123

But this is not uſuall, unleſſe it bee to prevent ſome great and ſudden danger; (eſpecially againſt a man that is of any good eſtate, carriage, or report.)

Alſo this ſurety may be granted at the ſuit of ſome one perſon.

But the more difficult and dangerous this ſurety is to the party bound, the more regard there ought to be taken in the granting of it: and therefore, it ſhall be good diſcretion in the Iuſtices of peace, that they doe not command, or grant it, but either upon ſufficient cauſe ſeene to themſelves; or upon the ſuit and complaint of diverſe others (as aforeſaid) and the ſame very honeſt and credible perſons. *Supplicavit.*

Alſo this ſurety of good abearing, is often taken by the Iuſt. of peace, by vertue of a ſpeciall Writ in the nature of a *Supplicavit*, directed out of the Chancery, or Kings-Bench, and then the Iuſtice of P. upon ſuch a Writ is to proceed as a Miniſter, (as in caſe for the peace, *mutatis mutandis.*) *vide antea tit. Surety for the peace*, and *Supplicavit.*

I once received out of the Chancery ſuch a Writ directed *Cuſtodibus pacis in com' Cant. ac vicecomiti ejuſdem com': & eorum cuilibet*, and grounded upon the ſtatute 34. *Ed.* 3.) commanding us and every of us, to take foure ſureties (beſides the party whereof every one ſhould have lands of ſuch a yeerely value, or goods of ſuch a value; and to binde the ſureties every one in ſuch a ſumme, and the party in ſuch a ſumme, *Quod ipſe boni geſtus de cætero erit erga nos & fidelium populum noſtrum, & quod nihil in contrarium ſtatuti prædicti attemptabit, &c.* and therein I proceeded as a Miniſter onely.

The party againſt whom ſuch a *Supplicavit* for the good behaviour ſhall be granted out, before he be attached thereupon, may goe or ſend up, and give ſurety above in the Chancery, &c. (as here before *cap.* 69. for the peace) and thereupon he ſhall have a *ſuperſed.* out of that Court, directed to the Iuſtices of P. and Sherife, and to every of them, commanding them to ſurceaſe to arreſt the ſaid party, or to doe any other execution of the ſaid Writ of *Supplicavit*; and that if (before the comming of the ſaid *Superſedeas*) they have taken any ſuch ſecurity for the good behaviour of the party, that then they preſently releaſe the party of ſuch ſurety found by him, the former Writ of *Supplicavit* notwithſtanding.

For what cauſe this ſurety for the good behaviour ſhall be granted. Chap. 75.

1 IT is chiefly to be granted (by the Iuſtices of P. out of their Seſſions) in theſe caſes following, *viz.* Firſt againſt common Barretters, common Quarrellers, and common breakers or perturbers of the peace. See what Barretters be, *vit. Barretters antea.* P. Inſt. 14.

2 Alſo it is grantable againſt Rioters. See hereof before, *tit. Riots.*

3 Alſo againſt ſuch as lye in wait to rob, or ſhall be ſuſpected to lye in wait to rob, or ſhall aſſault, or attempt to rob another, or ſhall put paſſengers by the way in feare or perill.

4 Alſo

4 Alſo againſt ſuch as be generally feared (or ſuſpected) to be robbers by the high-way.

Fo. 135. b. 5 Alſo againſt ſuch as are like to commit murder, homicide, or other grievances, to any of the kings ſubjects in their bodies.

6 Alſo againſt ſuch as ſhall practiſe to poyſon another.

I lately granted the good behaviour againſt one, for that he had bought Ratsbane, and mingled the ſame with corne, and then wilfully and maliciouſly did caſt the ſame among his neighbours fowles, whereby moſt of his fowles died, and it was holden to be a good cauſe to bind the offendor over, by the whole Bench; and ſince I have knowne it allowed as a good cauſe by the Iudges of Aſſiſe.

7 The Iuſtice of peace alſo upon his own diſcretion (and without complaint) may bind to the good behaviour any other perſon, which in his preſence or hearing, ſhall misbehave himſelfe in ſome outragious manner of force, or fraud; and may commit ſuch perſon to the gaole if he refuſe to be bound. *Sir Francis Bacon*, 11.

2. Inſt. 178. 34. H. 3. c. 1. It is alſo grantable againſt ſuch as be of evill name and fame generally, but more ſpecially againſt ſuch as are defamed, or detected in any of theſe particulars following:

18. H. 7. 10. 1 Firſt, againſt thoſe that are greatly defamed for reſorting to houſes ſuſpected to maintaine Adultery, or Incontinency.

2 Alſo againſt the maintainers of houſes commonly ſuſpected to bee houſes of common Bawdry.

One that had ſuch lewd women found in his houſe, was bound to his Comp. 140 good behaviour, (by *Wray*, *Anderſon*, and *Manwood*,) 28. *El.*

1. H. 7. 7. 19. H. 8. 14. 3 Alſo againſt common whore-mongers, and common whores: for (by good opinion) Avowtry or Bawdry is an offence temporall, as well as ſpirituall, and is againſt the peace of the land.

13. H. 7. 10. & Travers 510. Vpon information given to a Conſtable, that a man and a woman be in adultery or fornication together (or that a man and a woman of evill report, are gone to a ſuſpected houſe together in the night) the officer may take company with him, and if he find them ſo, he may carry them to priſon; or he may cary them before a Iuſtice of peace, to find ſureties for the good behaviour.

4 Alſo againſt night-walkers, that be ſuſpected to bee pilferers or otherwiſe like to diſturbe the peace, or that be perſons of evill behaviour, or of evill fame or report generally, or that ſhall keepe company with any ſuch, or with any other ſuſpitious perſons in the night, 13. *H.* 7. 10. & 13. *E.* 1. *Winth. cap.* 4.

Againſt ſuch as by night ſhall evesdrop mens houſes.

Againſt Night-walkers that ſhall caſt mensgares or carts, &c. into ponds, &c. or ſhall commit other like miſdemeanors or outrages in the night time.

5 Againſt ſuſpected perſons, who live idlely, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon examination, they ſhall give a good account of ſuch their living.)

6 Againſt common haunters of Ale-houſes, or Tavernes, and common gamesters; but more ſpecially if they have not whereon to live.

7 Againſt common Drunkards; and yet by the ſtatute 4. *Iac.* 5. ſuch offendors

offendors must be thereof lawfully convicted: *sc.* by presentment of the offences at the Assises, Quarter sessions of the peace, or in the Court Leet, and thereupon a due proceeding to conviction, *&c.*

But now by the statute 21. *Iac. cap.* 7. any one Iustice of peace (or any head officer in any City, *&c.*) hath power to convince any person of Drunkennesse, *&c.* See *hic antea tit. Alehouses.*

And for the second offence of Drunkennesse, any one Iust. of peace may (upon his owne view, confession of the party, or proofe of one witnesse upon oath,) as it seemeth, bind such offendor to the good behaviour, 21. *Iac. cap.* 7.

8 Against all such as use to goe on message of Theeves. See Stat. 18. *E.* 2. *Pl. Leet.* 1.

For all these former offendors and the like, are evill members in the Common-wealth, and such their demeanor and living is greatly to bee suspected (and besides doe seeme to be more properly said against the peace of the land, then *Avowtry* in the case before, 1. *H.* 7. 7.) and therefore it seemeth reasonable, iust, and expedient, that the Iustices of peace (upon their discretion) should convent such persons before them, and examine them and their courses of life; and if they cannot yeeld a good reason and account of such their courses, then to bind them to their good behaviour.

Also the good behaviour seemeth grantable, against such as shall make false out-cries, or shall raise Huy and cries without cause, for these are disturbances of the peace. *Cromp.* 179.

If one man doe levy huy and cry upon another without cause, either of them may be attached (and bound over) as disturbers of the Peace, *P. R.* 156. 29. *E.* 3. *Fitz. Trespasse* 252. *tamen quare* concerning him upon whom the huy and cry is levied: Except that he be either a man of evill fame, or that there be some felony committed, *&c.*

Also it seemeth grantable against Cheaters and Cofiners.

Libellers (it seemeth) also may be bound to their good behaviours, as disturbers of the peace, whether they be the contrivers, the procurers, or the publishers of the Libell: for such libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and are speciall meanes and occasions tending and inciting greatly to the breach of the peace. See Co. 5. 125. P. R. 1. b.

Libellus, literally signifieth a little booke.

By use it hath also two significations: First, it signifieth the originall declaration of any action in the Civill law.

Secondly, it signifieth a criminous report of any person, cast abroad, or otherwise unlawfully published, and is called an infamous Libell.

Another describeth it thus, *Famosus libellus est qui impingit delictum alicui manifestum.*

And yet this libelling may be done after divers sorts or manners. Co. 5. 125.

1 By scandalous writings, be it in booke, ballad, epigram, or ryme, either in meeter or prose, as aforesaid.

2 By scandalous words, scoffs, jests, taunts, or songs, maliciously repeated or sung in the presence of others.

3 By pictures or signes, as by hanging of pictures of reproach, or signes or cloths of shame or disgrace neere the place where the party thereby traduced,

traduced, doth moſt converſe: as the picture of the Gallows, Pillory, Cucking-ſtoole, Hornes or ſuch like. *Co. 5. fol. 125.*

And in ſuch caſes it is not materiall whether the Libell be true or falſe, or the party thereby ſcandalized, bee living or dead, or be of good name or evill.

Ibid. And theſe libellors, as alſo their procurers, and the publiſhers thereof, be puniſhed in diverſe other manners:

1 Either they may be indited for the ſame,

2 Or they may be ſued in the Star-chamber,

3 Or the party grieved may have his action upon the caſe, and recover his dammages, *Lib. Intrac. fol. 13. Mes ceſt ſemble quant les parols ſont actionable.*

If therefore any man ſhall finde a libell, and would keepe himſelfe out of danger; if it bee made againſt a private man, the finder may either burne the ſame, or elſe hee muſt preſently deliver the ſame to ſome Magiſtrate.

But if it concernes, or bee made againſt a Magiſtrate, or other publike perſon, the finder ought preſently to deliver the ſame to ſome Magiſtrate, to the intent that by the examination and induſtry of ſuch Magiſtrate, the author may be found out.

Alſo this ſurety of the good behaviour, is uſed to be granted againſt the putative father of a baſtard child, *vide tit. Baſtardy.*

It ſeemeth alſo grantable againſt unlawfull hunters in Parkes, after their examination taken, *vide antea tit. Hunting.*

Alſo it ſhall be granted againſt him that ſhall abuſe a Iuſtice of peace, Conſtable, or other officer of the peace in executing their office: as

A. aſſaulted a Conſtable in doing his Office, it is a good cauſe to bind *A.* to the good behaviour. *Fitz. Barr. 202. Cromp. 135.*

The Sheriffes Bailife, upon a warrant from the Sherife (to make execution of the goods of *A.*) went into the houſe of *A.* finding the doores open, and *A.* ſhut the doores upon the bailife, and ſo detained him as a priſoner in his houſe, and Sir *Robert Houghton* one of the Iudges of the Kings Bench, thought it a good cauſe to grant out proceſſe *de bene gerendo*, againſt *A.* for thus abuſing of an officer of the law, *Anno 17. Iacobi Regis.*

9. E. 4. 3. A Iuſtice of peace ſeeth a man breake the peace (*ſcil.* to make an Aſſault, or Affray upon *A.*) and he chargeth him to keepe the peace, and the other anſwereth that he will not, the Iuſt. of peace may binde him to the good behaviour.

See Exod. 22. 28. For if (as one ſaith) contempt, or contumely, uſed to the perſon of a mans better, neither Policy for example, nor Religion for peace, may tolerate, much leſſe to uſe contempt towards, or to abuſe ſuch as are in authority, ſpecially when they are in executing their office.

Nay, it ſeemeth that he which ſhall uſe words of contempt, or *contra bonos mores*, againſt a Iuſtice of Peace, though it be not at ſuch time as he is executing his office, yet he ſhall be bound to his good behaviour.

Co. 11. 98. If a Citizen or Erteman of a city or towne corporate, ſhall uſe words of contempt, or *contra bonos mores*, againſt the chiefe officers of the Citie or Towne, or his brethren, they are good cauſes to commit him to priſon untill hee ſhall finde ſureties for his good behaviour: for obedience

and

and reverence ought to be yeelded to the Magiſtrate, for that they derive their authority from the King; and *obedientia eſt legis eſſentia.*

Alſo he that ſhall abuſe a Iuſtice of peace his Warrant, may be bound to the good behaviour. *Vide poſtea tit. Warrants.*

A man complaineth of a Riot, or Forcible entry, ſo that the Iuſtices of peace are aſſembled to inquire thereof, and then the party that complained will not proſecute the matter, it ſeemeth that the ſaid Iuſtices of peace may binde him to his good behaviour for this deluding them.

And ſo of ſuch as ſhall charge another with Felonie before a Iuſtice of peace, and yet will not give evidence, &c. *Vide antea tit. Felonie.*

A. is bound to keepe the peace againſt *B.* only, and getteth a *Superſedeas*, and after *B.* releaſeth him; after *A.* is arreſted for ſurety for the peace at another mans ſuit, and ſheweth this firſt *Superſedeas*, it ſeemeth hee ſhall be bound to his good behaviour for this deceit. Cromp. 134.

Yea whatſoever act or thing is of it ſelfe a Misbehaviour, or is againſt the good behaviour, is cauſe ſufficient to binde ſuch an offendor to the good behaviour.

By ſtatute. Alſo by the expreſſe words of the ſtatutes, the offendors hereunder named ſhall be bound to their good behaviour:

1 Diſturbers of Preachers, 1. *M.* 3. *P.* 1.

2 Deſtroyers of Fiſh-ponds, *&c.* or ſtealers of Fiſh, (after lawfull conviction, *&c.*) 5. *Eliz.* 21. *P. Fiſh* 7.

3 Takers of Hawkes, or Hawkes egges out of other mens grounds, after lawfull conviction, &c. *P. Hawkes* 1. 5. Eliz. 21

4 Vnlawfull ſtealers, hunters, or killers of any Deere or Conies in the night or day time, in any Parke or Warren, after lawfull conviction, *&c.* See the ſtat. 5. *Eliz.* cap. 21. 3. Iac. 13. 7. Iac. 13.

But all theſe former offendors muſt be bound at the Seſſions.

5 Popiſh Recuſants, abſtaining themſelves from Church twelve moneths; theſe ſhall bee bound in the Kings Bench, 23. *Eliz.* 1. *P. Recuſants* 1.

6 Hee that is attainted of Felony, and hath a pardon for the ſame, ſhall within three moneths find ſureties for his good behaviour; but he ſhall bee bound before the ſheriſe and coroners, who ſhall returne the ſame into the chancery. 10. E. 3. 3. P. Pard. 15

Alſo he that is acquitted of felony, if he be of evill fame, or of evill behaviour, it ſeemeth the Iuſtices of peace upon their diſcretion, may binde him to his good behaviour. *Cromp.* 135.

7 Such perſons as ſhall diſturbe the execution of the ſtat. 39. *Eliz.* 4. concerning the puniſhing, or conveying of Rogues, any two Iuſtices of peace may binde them to their good behaviour. *Vide antea tit. Rogues.* 39. Eliz. 4

8 So of ſuch as ſhall diſturbe the execution of the ſtat. for the releeſe, ſetting on worke, or ſeeling of the poore, *Vide antea tit. Poore.*

9 The mother of a baſtard child (which may bee chargeable to the Pariſh) for her ſecond offence ſhall bee committed to the houſe of correction, there to remaine untill ſhee can put in ſecurity for her good behaviour, &c. *Vide antea tit. Baſtardy.* 7. Iac. 4

10 Such as have their houſes infected, or be themſelves infected with the plague, and being commanded to keepe their houſes, ſhall diſobey, *&c.*

they

they shall be bound to their good behaviour, for one whole yeare *vide antea tit. Plague.*

What Act shall be a forfeiture of the recognisance taken for the good behaviour, see here before, *cap.* 74. *Forf. of the Recognisans.*

Lamb. 111. Also it seemeth, that the party bound to his good behaviour for offending against any of the statutes here before mentioned, if hee shall afterwards offend against any the said statutes, hee shall thereby forfeit such his Recognisance.

To bee Drunken, is a breach of the good behaviour, as Sir *Nicholas Hyde* did deliver it in his charge at Cambridge Lent Assises, *Anno* 3. *Caroli Regis.*

The forme of a warrant for the good behaviour, *Vide postea. tit. Warrants: cap.* 121.

The forme of the Recognisance for the good behaviour, *Vide postea tit, Recognisances. cap.* 123.

Lamb. 116. Whether the surety of the good behaviour (taken upon complaint) may bee released by any speciall person; some doe doubt it, because it seemeth more popular than the surety of the peace, yet others doe hold that it may be released, either by the Iustice of P. himselfe that tooke it, in discretion, or by the party upon whose complaint it was granted, even as that for the peace may. *Release.*

1 I. 22. It seemeth also a *Supersedeas* of the good behaviour may bee granted by the Iustices of peace (as well as for the peace, *mutatis mutandis*) upon Com. 237. Com. 246. good sureties taken by the said Iustices, of the party, to bee of good behaviour. *Supersedeas.*

If a man bee bound to the good behaviour (before a Iustice of peace) and to appeare at the next Assises or Sessions, yet the party bound may by a *Certiorari* remove the Recognisance (into the Chancery, or Kings Bench) before the day, and then hee shall not needs to appeare at the Assises, or Sessions; for they shall have no Record, whereupon he may be called there. *Certiorari.*

Forcible Entrie, and forcible Detainer. CHAP. 76.

Lamb. 118. Comp. 67. THe Common Law (being the preserver of the common peace of the land) hath alwaies abhorred force as the capitall enemy thereto, *Co.* 3. 12. and yet, before the Reigne of King RICHARD the second, the Common law seemed to permit any man to have entred into lands and tenements with force and armes, and also to have kept and detained them with force, where his entry was lawfull.

And at this day, if a man doth enter into any lands or tenements with force, (or multitude of people) where his entry is lawfull, hee is not punishable by action, eyther at the Common law, nor (by action) upon any statute, for where the title of the plaintiffe is not good, there hee hath no cause of action, although the defendant doth enter with force: but in such case hee that entreth with force must bee indicted upon the statute: or otherwise complaint may bee made thereof to the Iustices of peace: and as well upon such indictment, as upon such complaint, the offendor shall bee punished; yet the party (*ousted*) shall not bee

1 H. 7. 17. 8. Forc. 11.

reſtored without endictment, and the force thereby found. *vide antea 111. Forcible Entry.*

And for the better reſtraining of ſuch force and Forcible Entries into lands and tenements, and to inflict condigne puniſhment upon the offendors therein, it was firſt provided by the ſtatute 5. *Rich.* 2. that no man ſhould enter into any lands or tenements, with force or multitude (though he had good right, or title to enter,) but ſhould Enter onely in peaceable and lawfull manner. See *Plo.* 86. *b.* 5. Rich. 2. Regist. 18.

But this ſtatute provided no ſpeedy remedy, nor extended to holding with force, nor gave any ſpeciall power therein to the Iuſtices of peace (but upon a generall enquiry, in a generall Seſſions of the peace, and not otherwiſe) and therefore by another ſtatute made 15. *Richard* 2. it was further provided, that if any man ſhould detaine (or hold) with force, after ſuch Forcible Entry made, upon complaint thereof made to any Iuſtice of peace, the ſame Iuſtice ſhall preſently take and come with the power of the Country, and ſhall goe and view the ſame, &c. and if the ſame Iuſtice doe finde any holding the ſame forcibly, that then they ſhould bee impriſoned by the ſame Iuſtice, as convict by the Record of the ſame Iuſtice. 15. Rich. 2.

Yet neither of the former ſtatutes extended to thoſe that entred peaceably, and then held with force, nor yet doth give any remedy, if the parties who made the Entrie with force, be removed before the comming of the Iuſtices of peace; nor yet ordained any paine againſt the Sheriffe, if hee did not obey the precepts of the ſaid Iuſtices, for to execute the ſaid ſtatute, when the ſaid Iuſtices would enquire of the ſame. And therefore the ſtatute of 8. *Henry* 6. doth give remedy, firſt where any man ſhall enter with force, or ſhall enter peaceably and after detaine, hold, or keepe poſſeſſion by force. 8. Hen. 6.

Alſo theſe two laſt ſtatutes of 15. *R.* 2. and 8. *H.* 6. doe inable any one Iuſtice of peace to give preſent remedy, *viz.* to remove the force, and commit the offendors, in caſes of Forcible Entry, or holding againſt the aforeſaid ſtatutes.

And the ſaid ſtatute of 8 *H.* 6. extendeth further, reaching the offendors if they were removed or gone before the comming of the Iuſtices; giving the Enquiry and Reſtitution, and alſo puniſhing the Sheriffe that ſhall not obey the precepts of the Iuſtice in this behalfe.

So that theſe ſtatutes doe now give full remedy, and doe prohibite, and are made againſt theſe three degrees or ſorts of force, *viz.* againſt, Fitz. fol. Lamb. 19

1 Such as enter peaceably, and then hold forcibly.

2 Such as enter with force, and then hold peaceably.

3 Such as doe both enter forcibly, and hold forcibly.

I have (here before) already ſhewed in ſome meaſure how the Iuſtice of peace ſhall demeane himſelfe in the execution of theſe ſtatutes; now I will proceed to give him ſome further light in this buſineſſe, in theſe particulars following.

1 Firſt, what is a forcible Entry, and what is a forcible holding, within the meaning of theſe ſtatutes.

2. Who may commit a Forcible Entry, &c. and upon whom.

3 Where

3 Where a force, or forcible holding, is juſtifiable, or lawfull.

4 What and how many ſeverall remedies the party hath, that is ſo put out, or kept out of his poſſeſſions.

5 The manner of proceeding of the Iuſt. of peace by Enquiry.

6 Of reſtitution to be made to the party ſo put out; by whom, and to whom.

7 What cauſes there may be for ſtaying the Iuſtice of peace from making Reſtitution.

What is a Forcible Entry, or holding, within theſe Statutes. CHAP. 77.

OVR Law taketh knowledge of two manners of force; the one may bee termed a force in judgement of Law, which accompteth every private treſpaſſe to be a force; ſo as if I do but paſſe over another mans ground without licence, hee may have his action of treſpaſſe againſt mee, *Quare vi & armis, &c.*

The other manner of force is more apparant, and alwayes carrieth ſome fearfull ſhew, and matter of terror with it.

This laſt ſort of force is that which is prohibited by theſe ſtatutes: and therefore note, that every force puniſhable by theſe ſtatutes, muſt have one of theſe two badges, *ſc.* it muſt bee either *Manuforti*, with force or ſtrong hand, or *Multitudine*, with multitude of people, *Lambert.* 145. & 5, *R.*2. *cap.* 7.

Manuforti, viz. either with apparant violence (in deed, or in word) offered to the perſon of another, as threatning ſpeeches, turbulent behaviour, or actuall violence; or elſe that they be furniſhed with offenſive weapons (by them not uſually borne;) and this may bee done by one perſon only. *Vide poſtea ſub hoc tit.*

Multitudine, ſc. with company more than uſually they have attending on them, 10. *H.* 7. 12. Now by ſome opinions the Law calleth a multitude when there be ten or moe in one company, *Multitudine decem faciunt.*

And yet Sir *Edward Coke*, upon *Littleton* 257. ſayth, that he never read it reſtrayned by the Common Law to any certayn number, but left to the diſcretion of the Iudges or Iuſtices.

Now one may commit a Force: and three may commit a Riot, &c.

Lamb. 146. If therefore one or moe perſons ſhall come weaponed (eſpecially with weapons not uſually borne) to a houſe or land, and ſhall violently enter thereinto, this is a forcible entry within the meaning of theſe Statutes. *Forcible Entry.*

Much more, if (being ſo entred) hee or they ſhall there offer violence, or feare of harme to the perſon of any that is in poſſeſſion thereof; moſt of all, if he or they ſhall forcibly and furiouſly expell and drive another out of ſuch his poſſeſſion.

So is it, if one ſhall enter peaceably (the doore being open, or only latched) and after he is in the houſe, he ſhall forcibly put another out of his poſſeſſion.

So is it, if he or they which ſhall enter peaceably, ſhall after their entry offer apparant violence, threatnings, or feare of harme to the perſon of any that is in poſſeſſion, to the intent to get him out, and to make him

leave the poſſeſſion, though they do not put him out of poſſeſſion, much more if they get the poſſeſſion thereby.

If he or they that have entred peaceably, ſhall after uſe words to any in poſſeſſion to this effect, as to ſay they will hold it or keep it, though they die for it, or in ſpight of the other, or ſuch like, or other threatning words, this maketh it a forcible entry.

So it is, if divers perſons ſhall come with weapons (not uſually borne by them) to a houſe that is open, or to ground, and ſhall there enter peaceably, without any diſturbance; yet this is a forcible entry, for it ſhall be intended that they would have uſed force, if they had been reſiſted. Lamb. 146. Cromp 69.

So it is, when the maſter entreth into a houſe, or land, being attended with a greater number of ſervants than uſually do wait on him. Co. L. 257. 10. H. 7. 11. Br. Forc. 30.

Note, that though a man do actually uſe no force in his entry, yet if he do come ſo appointed, either with weapon, or company, that other men may bee reaſonably afraid that hee mindeth to make his way by force, rather than he will fayle of his purpoſe, it ſeemeth to be a forcible entry. Lamb. 146.

And if three or moe ſhall enter peaceably, (upon another being in poſſeſſion) and ſhall continue there peaceably, thought this be no forcible Entry or Deteiner, yet it may prove a Riot in regard of the Number.

Now there are two ſorts of force as is aforeſayd, *ſc.*

1 An actuall force, as with weapons, or number of perſons, &c. not uſuall.

2 A force implied in Law; as every Diſſeiſin, Reſcous, and Treſpaſſe implieth a force, and is *vi & armis*. *Co. L.* 257.

A Treſpaſſe Alſo it ſeemeth that every entry into another mans houſe, or ground which is made with force (*ſc. manuforti*, or *cum multitud.* either with apparant violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer feare) though it bee but to cut, or take away another mans corne, graſſe, or other goods, or to fell or crop wood, or do any other like treſpaſſe, and though he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry and an actuall force, puniſhable by theſe ſtatutes. See *Lamb.* 145.

But if the Entrie were peaceable, and after ſuch entrie made, they cut or take away any other mans Corne, Graſſe, Wood, or other goods, without apparant violence, or force, though ſuch acts are accounted a Diſſeiſin with force, yet they ſeeme not to bee puniſhable by theſe ſtatutes, *ſc.* the Iuſtices of peace are not to remove, impriſon, or fine ſuch offendors. Lamb. 146

Alſo, if one or moe ſhall enter into another mans houſe or land peaceably, and after his or their Entrie, ſhall by force or violence, cut or take away any Corne, Graſſe, or Wood, &c. or ſhall forcibly and wrongfully carry away any other good there being; this ſeemeth to bee a forcible entrie, puniſhable by theſe ſtatutes. Cromp. 11 H. 6. 16.

So is it, if a man ſhall diſtraine with force, for a Rent (bee it due, or not due) this doth countervaile an Entrie with force. *Lamb.* 147. *Br. force.* 1. 20. H. 6. 11.

And in theſe caſes of Treſpaſſe only, the Iuſtice of peace (upon complaint to him made) may, as it ſeemeth, remove ſuch force; and upon view thereof, may impriſon and fine ſuch offendors.

If

If a diſſeiſor hath entred peaceably, and being entred, ſhall preſently threaten to kill the diſſeiſee (if he re-enter) this ſeemeth a forcible entry in the diſſeiſor. See more *poſtea ſub hac tit.* *By words.*

2 H 7 16. Before 25 But note, that a forcible entry cannot be without an actuall entry, for the words of the ſtatutes be, Whoſoever doth enter, &c.

Cromp. 70. Note alſo, if one that hath right to enter upon land, ſhall goe with divers in his company, and with weapons, over the land whereto hee hath right, to the Church, Market, or ſome other place; this is no entry with force, except hee ſhall expreſſe his intent, that hee doth enter there claiming the land.

Note alſo, that if a man ſhall enter with force (into houſe or land) although hee obtaineth not, nor getteth the actuall poſſeſſion thereby, yet ſhall he be impriſoned & fined for the only entring with force (as it ſeemeth) See the ſtatute: but reſtitution is not to be made, but onely where there is a forcible putting out, or a holding out, of another out of his poſſeſſion and found by a Iury.

If by faire meanes, a man (whoſe entry is lawfull) ſhall perſwade or intice them which are within the houſe, to come out, and then (the doore being open, or ſhut by the latch onely) hee ſhall enter peaceably, without multitude, offenſive weapons, or other violence; this entry ſeemeth to bee juſtifiable. *Lawfull.*

So is it, if he ſhall enter peaceably, and then by gently perſwaſions can ſend them out that are within the houſe, and after ſhut the doore, and keepeth them out; this ſeemeth iuſtifiable, ſo that afterwards hee holdeth it not forcibly, nor uſeth violence or threatning ſpeeches.

Lamb 149. So is it, if I ſhall take a man being out of his houſe, and then I doe put or ſend into the houſe my ſervant (or ſome other) in peaceable manner, and doe hold away the other by impriſonment of his perſon; this is no forcible entry nor detainer within theſe ſtatutes, but a falſe impriſonment, puniſhable by action onely.

So it is, if hee whoſe entry is lawfull, ſhall enter peaceably into his houſe (the doores being open, or ſhut by the latch onely) and being ſo entred, ſhall continue and abide there peaceably; this is iuſtifiable. And if they which were before in poſſeſſion, ſhall put or thruſt him out forcibly, this is a forcible detainer of their parts. See more hereof *ſub hac tit. poſtea.*

Lamb 149. Forcible Deteiner, muſt bee underſtood of a forcible detaining of the poſſeſſion of lands or tenements, and not of the perſon of a man, as before. *Forcible Detainer.*

Note alſo, though the entry were at the firſt peaceable, and lawfull, yet if there be after a holding by force, it is puniſhable by the ſtatute, except where there was at the firſt a lawfull and peaceable entrie, and thereupon a lawfull poſſeſſion, peaceably continued by the ſpace of three yeeres together, without interruption; for there a man may hold and keepe ſuch poſſeſſion with force againſt all others (ſaving againſt the Kings Officers.)

Cromp. 71. 31 H. 6. ca. 9. 11 H. 4. 16. For. 4. 20 H. 6. 11. Lamb 164.

Lamb. 148. 8 E. 4. 1. Cromp. 70. If the Iuſtice of peace ſhall come to the houſe or place, that is ſuppoſed to be holden with force, and there ſhall finde the doores or gates

ſhut, and he or they within ſhall deny him to enter, (or will not ſuffer him to enter) this is a forcible holding and deteiner, though there be no weapons ſhewed or uſed, or though there bee but one perſon in the houſe, or upon the ground.

So it is, if when the Iuſtice of peace entreth the honſe or ground, he ſhall finde there any perſons in harneſſe or otherwiſe armed, or having harneſſe, armour, or other weapons (not uſually borne by them) lying ready by them, this is forcible Deteiner. Ibid.

So it is, if the Iuſtice of peace ſhall finde in the houſe, any great number of people, other than the ordinary family, or company. Ibid.

Alſo if a man ſhall enter peaceably into a houſe, and after ſhall bring into the ſame more weapons than hee and his ordinary family doe uſually weare; or ſhall make any uſe of ſuch weapons as he doth finde in the houſe, to defend his poſſeſſion therewith; theſe are forcible deteiners within theſe ſtatutes. P.R. 40.

If a man that hath peaceably entred into an houſe, will beſtow men with force, (*ſc.* with harneſſe, gunnes, or other weapons) in ſome other houſe or place, not far diſtant, to the intent that they may bee ready to aſſault ſuch as ſhall enter upon him; this is a Deteiner with force. Ibid.

So it is, if the diſſeiſor of an houſe or land, ſhall foreſtall the way of the diſſeiſee, with force and armes, ſo that the diſſeiſee dareth not enter, or come neere thereto for feare of death, &c. Lamb. 149. Cromp. 61.

So if a man ſhall diſtraine for a rent Service, or a rent Charge, & a Reſcous ſhall be made unto him; this is a diſſeiſin with force. *Co. L.* 161. *b.*

So is it, if a man ſhall keepe his cattell in another mans ground by force, claiming Common there, where hee hath no Common; and in this caſe, the Iuſtice of peace upon complaint to him made, may remove this force, and upon view thereof may record it, and may commit ſuch offendors to priſon, and may fine them therefore, as it ſeemeth, but cannot award reſtitution: P.R. 38.

By words. Alſo there may be a forcible deteining of poſſeſſion by word onely without any forcible act.

As if *A.* hath wrongfully (though peaceably) entred into the houſe, or upon the land of *B.* and hath put out *B.* and ſhall preſently threaten or ſay to *B.* that if he doe come thither againe to enter, he will kill him, this ſeemeth a forcible entry by *A.* And if *B.* ſhall afterwards come againe to make his entry, and then *A.* ſhall threaten to kill him if hee entreth there; this is a forcible deteiner in *A.* Lamb. 149. Cromp. 59. P.R. 39.

And it ſeemeth that to threaten to maime, beat, or to doe other bodily hurt to *B.* in the caſe aforeſaid, amounteth to a forcible Entry or Deteiner, for that death may enſue upon ſuch beating or hurt. See 39. *Henry* 6. 50. 7. *E.* 4. 21.

But to threaten to burne the houſe or to ſpoyle his goods therein, (if *B.* ſhall come thither, to enter againe) this ſeemeth not to amount to any ſuch matter, for that *B.* may afterwards have his action for the burning of his houſe, or ſpoyling of his goods, and ſhall thereby recover damages, to the value thereof, &c. 39. H. 6. 50. 8. Dwar. 12. 26.

Alſo when *B.* ſhall come to make his Entry as aforeſaid, if *A.* ſhall ſay Cromp. 59.

to

to him, that he will not open the doore, this is no forcible deteiner.

Cromp. 73. So it is if *A.* be in poſſeſſion of a houſe, or hath a leaſe thereof at the will of *B.* and after *B.* entreth into the houſe, and commandeth *A.* to goe out, and to leave him the poſſeſſion, and *A.* will not goe out, this is no force; for refuſing, or denying onely to goe out, is no force, unleſſe there be withall ſome forcible act or threatning ſpeeches: *ubi factum nullum, ibi fortia nulla*, where there is no fact, there is no force. *Co.* 4. 43.

A. morgageth his houſe to *B* upon condition, that if *A.* ſhall pay to *B.* ſuch a day 40. li. then the ſayd morgage (and feoffement) to be voyd and by agreement of them both, *A.* the morgager continueth the poſſeſſion untill the day of redemption, at which day *A.* payeth not the 40. li. and after *B.* commeth to re-enter, and *A.* keepeth the poſſeſſion by force, this is a deteiner by force in *A.* This was M. *Richard Godfreyes* opinion betweene *Willowes* and *Thurger*.

Cromp. 69. The diſſeiſor maketh a gift in taile to *B.* who keepeth the land with force at the time when the diſſeiſee maketh his claime, which claime is made within the view, ſo neere as he dareth, for feare of death, battery, or other bodily hurt; if *B.* after ſuch claime ſhall continue the poſſeſſion with force, hee may be thereof indited, &c. for this amounteth to a new Entry, and a deteiner with force by *B.*

Lit. 429.

And note, that whereſoever mine entry is lawfull, if the poſſeſſion be detained or holden from me by force, I may pray the ayde of the Iuſtices of peace to remove ſuch force as it ſeemeth.

If a man hath a rent or common of paſture out of another mans land, and comming to diſtraine for his rent, or to uſe his Common, he is ſo forcibly reſiſted by the tenant of the land, that he cannot, or dareth not, either diſtraine for his rent, or take the benefit of his Common; this is a holding with force in the tenant, and puniſhable by theſe ſtatutes. *Rent.*

Lamb. 149. Cromp. 70. P. R. 63.

So it is, if the tenant of the land ſhall foreſtall the way with force and armes, or ſhall threaten him (that hath the Rent or Common) ſo that hee dareth not to come to diſtraine for his rent, nor to take his Common.

Cromp. 99.

So it is, if a man ſhall diſtraine for his rent, and the tenant of the land ſhall make reſcous with force and armes.

Ibid. Rolmp. 70.

And in theſe caſes (of a rent, or common) the Iuſtice of peace) upon complaint to him made) may remove ſuch force, and upon view of ſuch force, may record it, and may therefore impriſon and fine ſuch offendors, but cannot award reſtitution, (*ſc.* cannot reſtore the party to his rent or common, which are to be taken, and uſed in another mans land) for reſtitution is not to be made, but onely of houſe or land, as you may ſee hereafter.

Lamb. 174. Co. L. 257. One perſon alone, may commit or make a forcible entry, or deteiner, if ſo be he doe it with offenſive weapons not uſually borne, or doe uſe turbulent behaviour, violence, or threats, &c. to the affray or terrour of others; or doe refuſe to ſuffer the Iuſtice of peace to enter. *The perſons*

Cromp. 69. An infant of the age of eighteene yeares, by his owne act may commit a forcible entry or deteiner: and ſo hee may though hee be under eighteene, if ſo be that he be of the age of diſcretion; (*ſc.* of the age of fourteen yeeres.) See *Perk. f.* 10. *b.* and it ſeemeth the Iuſtice may fine him therefore. But yet

yet it ſhall bee good diſcretion in the Iuſt. of peace to forbeare the impriſonment of ſuch infants. See *B. imp.* 43. 45. 75. 101. *& hic poſtea tit. Impriſonment.*

For an infant ſhall ſuffer no impriſonment or corporall paine for any offence by him committed againſt any ſtatute, wherein an Infant is not expreſly named.

But yet he may forfeit the penalty of a penall ſtatute, and ſo by a penall ſtatute may forfeit and loſe his goods, if he be of yeares of diſcretion. See *Doctor & Stud.* 147. 148.

And an Infant of the age of eighteene yeares, may be a diſſeiſor with force, and may be impriſoned for the ſame. 22. *Edw.* 4. *fol. Old. Nat. Br.* 128.

That Infants may be impriſoned by expreſſe words in ſome ſtatutes, See *hic cap.* 45.

But if an Infant commandeth another to enter, or hold with force to his uſe, which is done accordingly; yet the Infant ſhall not be puniſhed for ſuch offence, for his commandement therein was voyd.

Alſo a *Feme covert*, (by her owne act) may commit a forcible entrie or deteiner; and upon the Iuſtices view of the force, ſhe ſhall be impriſoned therefore, (and it ſeemeth alſo ſhe may be fined in ſuch caſe:) But ſuch fine ſet upon the wife, ſhall not be levied upon the husband; For the husband ſhall never be charged for the act or default of his wife, but when he is made a party to the action, and judgement given againſt him and his wife, *Co.* 9. 72. *& Co.* 11. 61. Cromp. 60. 16. Aſſ. 7. Br. imp. 45. 53. See more after in the tit. of Riot.

Divers do enter with force to the uſe of *A.* who is not then preſent with him, but doth after agree thereto; this agreement after maketh *A.* to bee a diſſeiſor, but not to be puniſhed for the force, *quare* if *A.* had counſelled, conſented, or agreed thereto before the entry: it ſeemeth that a commandement, conſent, or agreement before or after, though it may make one a diſſeiſor, yet it is not to bee puniſhed by the Iuſtice of peace, upon theſe Statutes, for that a forcible entrie cannot bee adjudged againſt a man, without an actuall entrie bee alſo made by him or her at leaſt preſent. 2. H. 7. 19. Br. force 25.

Conſent. But if *A.* that ſhall command or counſell others thereto, ſhall alſo be preſent at the time of the entrie, although he doth then nothing, yet he is now become a principall, and puniſhable by theſe Statutes, *Vide* 17. *Aſſ. pl.* 14.

If divers doe come in one company, to enter into lands, &c. where their entrie is not lawfull, and all of them (ſaving one) did enter, and demeane themſelues in peaceable manner, and one onely doth enter with force, or (after entrie made) doth uſe force and violence, This ſhall bee adiudged a forcible entrie in them all (although the force were againſt their wills;) for where divers do come in one company to any place, to the intent to do any unlawfull thing, bee it robberie, homicide, ryot, affray, or any treſpaſſe, here the act of one of them ſhall bee adiudged the act of all of that part that are preſent, and every one of them ſhall bee adiudged a principall doer, although they ſtand but by and doe nothing. So it ſeemeth, though ſome of them came without any intent of Co. 9. 67. 112. & 115. See hereof after in the tit. Murder. Fitz-Coron. 324. 330.

evill

evill, if they came together in company with the other offendors, or if they came after, yet if they be either ayding, or countenancing to the offendors, they ſhall bee alſo adjudged principall doers as well as the other. And yet *Fineux* chiefe Iuſtice, 2. *H.* 8. made a difference where their intent at the firſt was to do an unlawfull act, and where not, *Cro.* 161.

Co. 1. 46. & 10. 113. An indictment upon the ſtat. of 8. *H.* 6. for the K. is not good; for the K. cannot bee diſſeiſed, nor put out of his freehold; neither can the K. bring any action upon the ſtatute of 8. *H.* 6. nor any other action which might prove him out of poſſ. of the land. *P. R.* 39. *b.* *The perſons put out.*

Cromp. 69. And if the K. termor bee put out by force, hee cannot preferre a Bill of indictment (upon the ſtat. of 8. *H.* 6.) that hee was put out, and the King diſſeiſed: But hee muſt have an Information of Intruſion in the Exchequer. *The Kings Tenant.*

Yet it ſeemeth, that upon complaint made to the Iuſt of P. by the K. termor, of any ſuch force, the Iuſt. of P. may, nay ought to remove the force, and upon his view thereof to record it, and to commit the offendors to priſon, and may fine them, and after ſuch force removed, the Kings termor may preſently re-enter (if he can) in peaceable manner.

If a forcible entry or deteiner ſhall bee made upon any leſſee for yeeres, tenant at will, or upon a copiholder, whether it bee by an eſtranger, or by the leſſor, or by the lord, the Iuſtice of P. upon their view thereof, are to remove ſuch force, and may commit to the priſon, the parties which made ſuch entry, or which ſhall hold it with force, and may fine them: But whether the Iuſtice of P. might make reſtitution, and ſet them (*ſc.* the leſſee for yeeres, tenant at will, or copiholder) into their poſſeſſions againe, hath been much queſtioned. *Leſſee for yeeres. Copiholder.*

Lamb. 149. Some hold opinion, that the Iuſt. of P. might put them in poſſeſſion againe; and of this opinion was M. *Marrow*, and M. *Lambert*: and to maintaine this opinion, theſe reaſons may be given.

Firſt, for that the words of the old ſtatutes ſeemeth to warrant it: For the ſtatute of 15. *R.* 2. in the preamble thereof, as alſo the ſtat. 8. *H.* 6. in the body thereof hath this word [poſſeſſions] which word moſt properly doth extend to a leaſe for yeeres, &c.

Againe, that clauſe of the ſtatute 8. *H.* 6. which provideth the reſtitution, is thus; If it be found that any doth contrary to this ſtatute, then the ſayd Iuſt. &c. ſhall put the party ſo put out, in full poſſeſſion, &c.

Now it cannot bee denied, but that hee which by force expulſeth leſſee for yeeres, tenant at will, or a copiholder, doth contrary to this ſtatute, alſo they be the parties put out.

Againe, the ſame miſchiefe and inconvenience, which theſe Lawes do labour to remove; is to leſſee for yeeres, tenant at will, and to the copiholder.

Co. 11. 33. 34 Plow. 178. And we may finde it uſuall, that where ſtatutes are made for to remedy any common miſchiefe, there (to help things in the ſame degree) one action, thing, place, and perſon, hath in conſtruction been taken for another: And a good expounder (ſayth Sir *Ed. Co.* 11. 34.) maketh every ſentence to have his operation to ſuppreſſe all the miſchiefes before the ſayd act, and principally thoſe that are ſpecified in the act.

And

And againe, ſayth hee, it is the office of the Iudges alwayes to make ſuch conſtruction of Statutes as may repreſſe the miſchiefe, and advance the remedy, and to ſuppreſſe all evaſions which may continue the miſchiefe, and to adde force and life to the cure, and remedy, according to the true intent of the makers of the Statut. *Co.* 11. 73. *b.* & *Co.* 3. 7. Co. 3. 7. & 12 73.

Others hold the contrary, *ſc.* that Leſſee for yeeres, nor a Copiholder, or Tenant at will could not have reſtitution by the hands of the Iuſtice of peace: and this ſeemed to bee the common opinion; their reaſon was;

For that the words in the Statute of 8. *H.* 6. (in that clauſe which ſpecially provideth the reſtitution) are thus; The ſayd Iuſtices, &c. ſhall reſeiſe the ſayd lands or tenements, and thereof ſhall put the party ſo put out, in full poſſeſſion, &c. which words [lands or tenements] are only to bee underſtood of them that have inheritance, or a freehold at the leaſt: but to this it may be anſwered, that the ſayd Statute of 8. *H.* 6. in the body thereof hath theſe words: Where any do make any forcible Entry into lands, tenements, or other poſſeſſions, or them hold forcibly, &c. which words [Poſſeſſions] extendeth to a leaſe for yeeres, &c. And then the words [Poſſeſſions] being in the ſame ſtat. we ſhall finde that a ſtat. is to be expounded upon all the parts thereof together, and not upon one part alone by it ſelfe: to which purpoſe, ſee *Lincolne Colledge Caſe*, and Doctor *Bonhams Caſe*, in Sir *Edward Cokes Reports*. Cromp. 7 Raſt. 174. Co. 3. 59. b. & 8. 117.

But it ſeemed to thoſe which had held this laſt opinion, that if a Leſſee for yeeres, Tenant at will, or a Copiholder, bee forcibly put out, or held out by any eſtranger, if they will have reſtitution, their indictment muſt be made and preferred in the leſſors, or Lords name, and the Iury muſt finde that the leſſor, or Lord of ſuch copihold, is diſſeiſed, and the leſſee or Copiholder is put out with force: And hereupon the leſſor or lord ſhall have reſtitution; and ſo by their reſtitution, their leſſee or copiholder is reſtored alſo; but ſuch leſſee or copiholder cannot (ſay they) preferre an indictment in their owne name, upon the ſtatute, 8. *H.* 6. for that they have no freehold. Cromb. 161.

And to that purpoſe I finde ſome preſidents of Indictments in this forme: *viz. In unum meſſuag. apud, &c. ad tunc exiſtent. liberum tenement. M. D. armig. vi & armis, &c. Manuforti, & illicite ſuper poſſeſſionem cujuſdam I. L. tunc firmarii prad. M. D. meſſuag. prad. intraverunt, & ipſum I. L. vi & armis, ac manuforti & illicite tunc inde expulerunt & ejecerunt & praf. M. D. inde injuſte deſſeiſiverunt &c.* See *poſtea titul. Praſidents.* Cro. 249. 2. Cal. 161.

Alſo by this opinion, if a leſſee for yeeres, tenant at will, or a copiholder be forcibly put out by their leſſor or lord, ſuch leſſee, or copiholder hath no remedy at all by indictment upon this ſtatute, for they have no freehold, and therefore can have no reſtitution upon this ſtatute. Cal. 162.

Alſo by this opinion, if the leſſee for yeeres bee put out by his leſſor, and after the leſſee putteth out the leſſor againe forcibly, the leſſee ſhall not bee indicted; neither ſhall the leſſor have reſtitution upon this ſtat. for that the leſſor is not ouſted nor diſſeiſed of his freehold: for the Cromp. 72.

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poſſeſſion of the leſſee is ſuch a ſeiſin of the leſſor of his freehold, that hee may haue an aſſiſe if his leſſee be put out:

And ſo of a copiholder, not having forfeited his eſtate, if his Lord notwithſtanding ſhall enter upon him, and put him out, and the Copyholder ſhall re-enter upon his Lord with force, the copyholder ſhall not be indicted, nor yet the Lord reſtored, *Cauſa qua ſupra.*

And ſo by this laſt opinion, the very miſchiefe ſpecified and intended to be helped by theſe ſtatutes, ſhould ſeeme ſtill to remaine in all caſes betweene ſuch leſſees and copyholders, and their leſſors or Lords, ſo as there can be no enquirie, nor reſtitution in caſes of forcible entrie or deteiner betweene them.

But howſoever the law bee taken for the indictment or reſtitution thereupon, yet in caſe that leſſee for yeares, tenant at will, or a copyholder be forcibly put out, or held out, either by a ſtranger, or by their leſſor or Lord, the
Comp. 71. Iuſtices of Peace or any one of them, by the ſtat. 15. *R.* 2. *ca.* 2. might ſafety remove the force, upon view thereof, and commit the offendors to priſon, and then the leſſee for yeares, or copyholder, might preſently re-enter, if peaceably they could ſo doe, and ſo might haue his poſſeſſion againe, without any reſtitution made him by the Iuſtices.

But now by the ſtatute made *Anno* 21. *Iacobi Regis, cap.* 15. it is enacted, that ſuch Iuſtices or Iuſtice of peace, as by reaſon of any Act of Parliament now in force, are authorized upon enquiry to give reſtitution of poſſeſſion unto tenants of any eſtate of freehold, of their lands or tenements, which ſhall be entred upon with force, or from them with-holden by force, ſhall now haue the like and ſame authority (upon indictment of ſuch forcible entries, or forcible with holdings before them duely found) to give like reſtitution of poſſeſſion unto tenants for terme of yeares, tenants by copy of Court Roll, guardians by Knights ſervice, tenants by *Elegit*, Statute Merchant, and Staple, of lands or tenements by them ſo holden, which ſhall be entred upon by force, or holden from them by force.

Now to ſhew ſomething more, what the law accounteth to be force, and *Weapons.* what weapons be offenſive in theſe, and the like caſes.

Lib. 3. Maſter *Bracton* ſaith, *Omnes illos dicimus armatos, qui habent cum quæ nocere poſſunt*; which haue any thing about them, wherewithall they may ſtrike or hurt.

And therefore to haue harneis, guns, bowes, and arrowes, crosbowes, halberts, javelins, bils, clubs, pikes, pitchforkes, or ſwords not uſuall borne by the parties, ſhall be ſaid to be *vis armata.*

Againe, *Si quis venerit cum armis, & dejecerit, vis tamen armata dicitur, ſufficit enim terror armorum.*

Lib. 12. *Si quis venerit ſine armis, & in ipſa concertatione, ligna ſumpſerit, fuſtes aut lapides, vis dicetur armata.*

And ſo to uſe caſting of ſtones, hot coales, ſcalding water, or lead, or any other thing wherewith one may hurt the perſon of another, ſhall be ſaid to be *vis armata.*

Lawfull

Lawfull Force. CHAP. 78.

WHere a force, or forcible defence is justifiable, and where not.

Force being opposed against the law, is utterly forbidden; but being used in the maintenance of the law, and with the warrant of law, it is allowed, for that it maintaineth the peace of the Realme: And therefore force may lawfully bee used by all the Kings officers, ministers and subiects thereunto deputed for the execution, or aduancement of Iustice, or of the Iudgements of the law. P.R. 41.

And so first it is a lawfull force, whereby all offendors in treason, felony, and other great crimes, be pursued, apprehended, carried to prison, and receive their condigne punishments.

It is a lawfull force, whereby the Sheriffe and his Officers doe apprehend any person by vertue of the Kings Writ.

It is a lawfull force, whereby Iustices of peace doe remove unlawfull entries, or holdings of possessions, and represse riotters, and doe arrest and send to prison such offendors.

And in these, and the like cases, the Kings officers (*sc.* the Sheriffe, Iu: of P. and Constable) may take the helpe of others (what number they shall thinke meete) to assist them, when need shall require. See hereof *postea in tit. Posse Comitatus.* 3. H. 7. Pr. Regis.

Also it is a lawfull force, which Iustices of P. Sheriffes, Coroners and Constables shall use in apprehending, or committing to prison such as within their severall iurisdictions, and in their presence, shall in any sort breake, or attempt to disturbe or breake the peace, and they may therein take the assistance of others as aforesaid.

Also in these cases following, it is lawfull for the Kings Officers, by force to breake open a mans house, to arrest offendors being therein, if the doores shall bee all shut, so as the Officer cannot otherwise enter the house, *viz.* P.R. 43.

1 For the apprehending of any person for treason, felony, or suspition of felony. 13. *E.* 4. 9. *Br. Coron.* 159. Co. 59.

2 Where one hath dangerously wounded another, and then flying into an house, the Constable or other Officer, upon fresh suit, may breake open the doore, and apprehend the offendor.

So may any other person besides the officer, as it seemeth, 7. *E.* 3. 19. *Cromp.* 171.

3 Where there shall be an affray made in a house, and the doores shut, the constable, &c. may breake into the house to see the peace kept.

4 So upon a forcible entry, or deteiner found by inquisition, before Iustices of peace or viewed by the Iust. themselves. See here *cap.* 22.

5 Vpon a *Capias Vtlagatum*, in any personall action, as also upon a *Capias pro fine*, directed to the Sheriffe, the Sheriffe may breake open the doores, &c. 27. *Ass.* 35.

6 Vpon a warrant or processe, for the apprehending of any Popish recusant being excommunicate, the officer may breake open the house, Stat. 3. *Iac.* 4. *P. Rec.* 52.

7 Vpon a warrant for the P. or good behaviour, the Constables may breake

breake open the house, by the opinions of *Popham* and *Clerke*, Iustices of Assise at Cambridge Assises, 3. *Iac. Reg.*

8 Lastly in all cases where the King is party, or hath interest in the busi. nesse, the Officers may breake open the doores as aforesaid: For no mans house shall be a castle against the King. *Co.* 5. 91.

Co. 5 91. 13. E. 4. 9. And yet the Sheriffe nor his officers may not breake open any mans house, to execute the Kings Processe (upon the body or goods of any person) at the suit of any subject. *Co.* 5. 92. 93.

But when a house is recovered by any reall action, or by *Ejectione firmæ*, there the Sheriffe may breake the house, and deliver seisin or possession to the demandant or plaintiffe, &c. For after iudgement, it is no more (in the right or judgement of law) the house of the tenant or defendant. *Co.* 5. 91.

Co. 5. 91. But note, that the officer before he breake open the house or doores of any person, he must first signifie the cause of his comming, and desire that the doores may be opened unto him.

Co. 5. 92. & 11. 82. 11. H. 7. 19. Note also, although no man may forcibly keepe his house against the Kings officers in the cases aforesaid, yet every mans house is (to himselfe, his family, and his goods) as his Castle, as well for his defence against injury and violence, as also for his repose and rest. And therefore the law doth give to dwelling houses divers priviledges. *Forcible defence lawfull.*

1 First, that it is a mans Castle for his defence as aforesaid. See *plus infra.*

2 Also a mans house hath the priviledge to protect him against any arrest by force of any processe at the suit of any subject as aforesaid.

Ca. 11. 8. 3 A mans house (in some cases) hath a priviledge against the Kings prerogative, for it hath beene adjudged that salt-peeter men cannot dig in the mansion house of any subject, without his assent, in regard of the danger that may happen thereby in the night time, to the owner, his family, and goods, by theeves and other malefactors, *Co.* 11. 82.

Co. 5. 91. & 11. 82. 4 If theeves shall come to a mans house to rob, or murther him, hee may lawfully assemble company to defend his house by force; and if hee or any of his company shall kill any of them in defence of himselfe, his family, his goods, or house, this is no felony, neither shall they forfeit any thing therefore.

Crom. 70. 5 Also a man that is in possession of a house peaceably, and doubteth that another (who indeed hath more right to the possession, and who may enter) will enter upon him, here hee which is in possession may defend and keepe his possession of the house with his ordinary company, and may iustifie to beat the other which shall attempt to enter upon him: But if he kill him, it is felony: nay he in poss. (in this former case) may not hire any strangers to ayd him, neither may he have his owne ordinary company in armor, nor otherwise be provided with bowes or guns to shoot at the other, as it seemeth. *Cromp.* 70. *a.* See *postea tit. Homicide. cap.* 98.

11 H. 7. 19. Br. Ryots 1. Co. 11. 82. 5. 91. Also if a man being in his house, doe heare that another will come thither to beat him, he may lawfully assemble his neighbours and friends, &c. to assist and aid him there in the defence of his person. *In defence of his person.*

And yet if hee, or any of his company, shall kill the other (or any of

the other company) in ſuch defence of himſelfe, or his, this ſeemeth to be felony in all of them which be in the houſe, and in that action; ſo as they ſhall forfeit their goods thereby. See hereof *poſſea tit. Homicide.*

But if a man be threatned, that if he come to ſuch a place, that then hee ſhall be beaten, in this caſe hee may not aſſemble any company to goe thither to ſafegard his perſon; for there is no neceſſity of his going thither: beſides he may have ſurety of the peace againſt ſuch as threatned him. 21.H.7.39. Co.11.82. & 191.

And if another ſhall make any aſſault upon mee, yet if I may eſcape with my life, it is not lawfull for me by the law to beat the other who made the aſſault, *per Markham. Quod tota curia conceſſit. 2. Hen. 4. fol. 7. Fitz Bar. 72. Vide hic antea tit. Surety for the peace, cap. 72.*

In defence of others. If there be an attempt made to beat a man, his wife, father, mother, or any of his children (within age) he may lawfully uſe force to reſiſt it, and may juſtifie the beating of the other in ſuch caſe. 9.E.4.28. 16.E.4.17

Alſo the ſervant may juſtifie to beat another in defence of his maſter. *Br. Trn's 217. hic cap. 72.* 21.H.7. 39.b.

But yet by the opinion of *Eliot. 12. H. 8 fol. 2. b.* it is not lawfull forcibly to touch the perſon of a man, except that there be ſo great perill that another is like to periſh if he have not helpe. And there I may beat one man (ſaith he) to ſave the life of another: ſo that where the life of another is in danger, there any man (though a ſtranger) may lawfully reſiſt it, and that with force and beating of the other, *vide hic. cap. 72.*

In defence of my goods. Alſo a man may juſtifie to beate another in defence of the poſſeſſion of his goods. And if another hath taken away my goods, I may take them againe from him with force. But a man cannot juſtifie the wounding of another in defence of his goods; and this was the opinion of *Wray* chiefe Iuſtice, *Am. 25. El.* Cro.63.64. Cro.92.

Alſo if there be an attempt made to diſſeiſe me of my land, or to diſturbe me of my high-way, or to turne an ancient water-courſe from my mill, I may lawfully uſe force to reſiſt it. *Vid tit. Surety for the peace. Cap. 72.*

A Keeper doth enter and chaſe upon my land, pretending this to be within his purliew, where it is not: If I command my ſervants to beat him off my ground, this ſeemeth iuſtifiable in the defence of my poſſeſſion, againſt ſuch unlawfull claime. *Tamen quare.* Dyer 33. Cromp.6.

Where forcible detainer of poſſeſſion is lawfull. CHAP. 79.

THe ſtatute of 8. *H. 6.* concludeth thus, Prouided that ſuch as keepe their poſſeſſion by force, after that they, or their anceſtors, or they whoſe eſtate they have in ſuch lands, &c. have continued their poſſeſſion in the ſame three yeares, or more, ſhall not be indammaged by force of that ſtatute. 8.H.6.9. 31.El.6. P.Form.4.

And by force of this ſtatute and proviſo, every heire, and every feoffee, may juſtifie to keepe their houſes and poſſeſſions by force, in caſe that themſelves, or their anceſtors, or their feoffors, or they whoſe eſtate they have, have beene in peaceable poſſeſsion thereof by the ſpace of three yeeres, or more. *Cro. 187.*

Yet this proviſo muſt (as it ſeemeth) bee thus conſtrued, *ſc.* that where a man is ſeiſed (of a lawfull eſtate of poſſ.) of an houſe, or lands, and hee 32.H.6.1 18.b. Br. Forc. 22. & 39.

or

See the ſtat. 31. El. 11.

or his anceſtors, or they whoſe eſtate he hath therein, have continued the poſſeſſion of the ſame peaceably by the ſpace of 3 whole yeeres together without interruption, (and his eſtate not ended) there hee may hold and keep ſuch poſſeſſion with force, againſt all others: yea it ſeemeth if he ſhall hire ſtrangers to aid him to keep ſuch poſſeſſion, or ſhall have his company in armour, he is not puniſhable by theſe ſtatutes: but he may not reſiſt the Iuſtices of peace that ſhall come to view this.

And if he ſhall be indited for ſuch his forcible holding (after three yeeres ſuch quiet poſſeſſion) he may plead ſuch his lawfull and peaceable poſſeſſion by the ſpace of three yeeres next before ſuch indictment, and thereby

P.R. 37. he ſhall avoid both the impriſonment and fine, and alſo ſhall debar the other party of his reſtitution: Neither may the Iuſtices of peace remove him from his poſſeſſion, though it bee found by the inquiſition taken before them that hee held that houſe or land by force, after three yeeres lawfull and peaceable poſſeſſion, as aforeſaid.

But here it ſeemeth that theſe foure diverſities are to be obſerved:

6. & 7. E. 6. 22. H. 8. Lamb 65. Br. Reſti. 12. Firſt, where the party in poſſeſſion did enter peaceably, and where forcibly: for if a man enter forcibly, and after continueth his poſſeſſion peaceably by the ſpace of three yeeres without interruption, yet (it ſeemeth) he ſhall not be aided by theſe ſtatutes.

Br. Forc. 22. & 29. Secondly, where the party in poſſeſſion hath continued his three yeeres poſſeſſion peaceably, and where by force.

For if after a lawfull and peaceable entry, a man ſhall continue or hold his poſſeſſion by force, this is a forcible holding or deteiner, and puniſhable by the ſtat. of 8. *H.* 6. And three yeeres of ſuch poſſeſſion ſhall not aid him, as it ſeemeth.

11. H. 6. 18. b Fl. Entry 20. Br. Forc. 6. Vide 23. H. 8. pag. ſeq. Thirdly, where the party in poſſeſſion is in by right, and of a lawfull eſtate, and where by wrong. And therefore if a diſſeiſor (or other perſon that commeth in by a wrongfull and unlawfull title) hath continued ſuch his poſſeſſion peaceably by the ſpace of three yeeres without interruption. It ſeemeth hee ſhall not bee aided by either of theſe ſtatutes of 8. *H.* 6. or 31. *El.*

14. H. 7. 28. Br. Fore. 10. For if a diſſeiſor hath continued his poſſeſſion forcibly by the ſpace of twenty yeeres together, yet he may bee indited upon the ſtatute of 8. *H.* 6. before a Iuſtice of peace, of the forcible detaining of the ſame, and the ſame being found, the ſaid Iuſtice of peace is to reſeiſe the ſame, and to award reſtitution to the party diſſeiſed, or ſo put out.

Fourthly, where the party hath continued ſuch his poſſeſſion three yeeres without interruption, and where his poſſeſſion hath been interrupted or diſcontinued.

For if a man hath been in peaceable poſſeſſion of land, &c. by the ſpace of three yeeres, and above, by a good title, and then is diſſeiſed and expelled by force, and the diſſeiſee re-entreth peaceably; or the diſſeiſor is

Dyer 141. Br. Fore. 22. & 29. therefore indicted upon the ſtatute of 8. *H.* 6. and the diſſeiſee is thereupon reſtored, and is in poſſeſſion accordingly: yet in theſe caſes the diſſeiſee cannot juſtifie the deteiner of the poſſeſſion of thoſe lands by force, becauſe his poſſeſſion was once interrupted: but after, (ſuch interruption and re-entry, or reſtitution) if hee ſhall continue a peaceable

poſſeſſion againe for three yeeres together, then it ſeemeth hee may juſtifie the detainer of the poſſeſſion thereof by force, by vertue of the proviſo in the ſtatute of 8. *H.* 6.

If a diſſeiſor hath continued his poſſeſſion peaceably three yeeres, and after the diſſeiſee doth re-enter, or doth make his claime ſo neere as he dareth, and then the diſſeiſor re-enters againe, or continueth his poſſeſſion (after ſuch claime) here the diſſeiſor cannot juſtifie to hold the ſame with force, for by the re entry or claime of the diſſeiſee, the firſt diſſeiſin and poſſeſſion of the diſſeiſor was determined, and the diſſeiſor is in of a new diſſeiſin. 23 H.8. Br. Forc. 22. Litt. 429.

Alſo if he that hath been a lawfull poſſeſſor of lands by the ſpace of twenty yeeres together, bee once cleerely and wholly removed from the poſſeſſion of the ſame land, hee cannot come with force, or multitude, to put himſelfe in poſſeſſion thereof againe, and to detaine the ſame with force, becauſe his poſſeſſion was once interrupted: and if he be indited (upon the ſtatute of 8. *Hen.* 6.) for ſuch forcible entry, hee ſhall not be relieved (touching the reſtitution) by the ſtatute 31. *Eliz.* for that he had not the occupation of the ſaid lands, nor had been in quiet poſſeſſion thereof by the ſpace of three yeeres together, next before the day of ſuch indictment found. Dyer 141.

How many ſeverall remedies the party hath, which forcibly and actually is either put out, or kept out of the poſſeſſion of his houſes or lands, &c. contrary to theſe ſtatutes. CHAP. 80.

1 Action upon the ſtatute of 8. H. 6.

FIrſt, the party ſo greived (having an eſtate for life, in tayle, or fee) may have his aſſiſe, or action of treſpaſſe of forcible entry upon the ſtatute of 8. *H.* 6. againſt ſuch diſſeiſor: and therein if the defendant be attainted of force, he ſhall fine to the King, and alſo anſwer to the plaintife his treble dammages, and treble coſts of ſuit, and alſo the plaintife ſhall thereupon have a Writ of Reſtitution to reſtore him to his former eſtate. *Co. L.* 257. 4 H. 4. ca. 1. 2 R. 2. ca. 9. 8 H. 6. ca. 9. P. 3. F.N.B. 341. c. e. & 240. a. Co. 10. 115. P.R. 39.

But (this action being the ſuit of the party, and only for the right) this remedy (by action) is only where the entry of the defendant was not lawfull: for if a man entreth with force, where his entry is lawfull; as if the diſſeiſee ſhall enter upon the diſſeiſor with force, he ſhall not be puniſhed by way of action: but yet he may be indited upon the ſtatute and upon ſuch inditement found, the party put out, (*ſc.* the diſſeiſor) ſhall be reſtored; for the inditement is for the force, and for the King. And here the offendor, *ſc.* the diſſeiſee, ſhall make fine to the King, although his right be never ſo good. *Br. forc.* 11. 15. *H.* 7. 17. 9 H. 6. 19. Fitz. 248. h. 15 H. 7. 7. Br. Forc. 29 & 18.

2 Writ upon the ſtat. of Northamp.

2 Alſo the party ſo grieved, if hee will loſe the benefit of his treble dammages and coſts, hee may bee aided, and have the aſſiſtance of the Juſtices of peace, and that after divers ſorts: Firſt, he may purchaſe a Writ out of the Chancery (directed to the Sheriſe only, or to the Sheriſe and Juſtices of peace, and to every of them) for to remove the force; and this is upon the ſtatute of *Northampton*, 2. *E.* 3. *cap.* 3. the forme of which writ you may ſee *F.N.B.* 249. *f.* Lamb. 173.

Lamb. 176. Crom. 74. 162.

But upon this writ the Iuſtice of peace is to proceed onely as a miniſter, and is to certifie his doings herein: and that Iuſtice of peace to whom the writ ſhall bee delivered, ought for to execute it, *ſc.* hee may remove the force; but here he may not put the party in poſſeſſion againe, who was put out.

For the manner of the Iuſtices proceedings herein, ſee in the other title of *Forcible Entry* before *cap.* 22.

Dyer 187. Crom. 165.

3 Alſo the party grieved, may at the generall Seſſions of the peace within the ſame county, preferre his bill of indictment, upon the ſtatute of 8. *H.* 6. for ſuch forcible entry, or deteiner; which being found there, the complainant ſhall be reſtored to his poſſeſſion by a Writ of reſtitution, granted out of the ſame Court to the Sherife. 3 *Indictment in Seſſions.*

4 Alſo the party ſo grieved, for a more ſpeedie remedie, may complaine to any one or more Iuſtices of peace of the ſame county, of the ſaid force; and thereupon the ſaid Iuſtice of peace may, *ex officio*, and without any writ, either do execution of the ſtatute of Northampton, as aforeſaid: or elſe the ſaid Iuſtice of peace upon ſuch complaint, muſt go to the place where ſuch force is, to ſee it, and to remove the force, and to arreſt and commit the offendors, and ſhall alſo keepe a ſpeciall Seſſions to inquire of the ſaid force: and if upon ſuch inquirie ſuch force ſhall be found, then the ſaid Iuſtice ſhall reſtore the partie grieved to his poſſeſſion againe; and here no other Iuſtice of peace can grant a *Superſedeas* to ſtay the ſame reſtitution. 4 *By the Neſt. out of Seſſions. Remedium plus Feſtivum.*

See more hereof before in the other title of *Forcible Entry.*

Alſo the partie grieved may remove ſuch indictment, found either at ſuch generall or ſpeciall Seſſions, by a *Certiorari* into the K. Bench, and the Iudges of that Court may award a writ of reſtitution, to the Sherife of the county, to reſtore poſſeſſion to the party. See here *cap.* 22.

Now when the Iuſt. of P. ſhall make ſuch inquirie, he ſhall direct his precept or warrant to the Sherife, commanding him to cauſe to come before the ſaid Iuſtice of peace at ſome good towne there neere, 24. ſufficient and indifferent perſons dwelling neere to the ſaid lands, or tenements (whereof every one ſhall have in freehold lands, or tenements 40. s. by the yeare at the leaſt) to inquire upon their oaths of ſuch force, &c. See before in the other title of *Forcible Entry.* *Enquiry.*

8 H. 6. *cap.* 9. Lamb. 168.

Vpon default of apparance of thoſe Iurors, the Iuſt. of P. may award an *Alias*, and after that *Pluries infinite*, till they come; but ſo that at the day of the ſecond precept, or writ, the Sherife muſt return 40. s. in iſſues, upon every one of them, and at the 3. writ 5. li. and at every day after the double.

Lamb. 155.

And although any of ſuch Iurors ſhall not have 40. s. freehold land *per annum*, yet their preſentment of ſuch force, is good for the King, ſo as the offendors ſhall fine therefore to the King: but whether the partie ſhall have reſtitution upon ſuch a preſentment, it being pleaded or ſhewed at the time of the reſtitution to bee made, ſeemeth a doubt. See here, *cap.* 84.

Lamb. 156.

If the Sherife ſhall returne ſmaller iſſues upon the Enquirors than the ſtatute doth appoint, yet the party indicted ſhall not impeach the enquirie therefore.

Neither is it cauſe to impeach the enquirie, though the Iuſtice of peace doe not goe to ſee the place where the force is. *Marrow.*

And it is convenient, upon ſuch enquirie, that the evidence be given openly to the Iury, to the intent it may appeare to the Iuſtice of peace or Court, whether there ſhall be reaſonable cauſe to ſtay reſtitution, or no, after the indictment found. See *Dyer.* 122.

Of reſtitution to be made to the party put out. CHAP. 81.

Reſtitution

I Will here ſhortly recite the words of the ſtatute, which for this buſineſſe of reſtitution will give the better light. 8.H.6.9.

And if upon ſuch inquiry, it be found before the ſaid Iuſtice, that any have done contrary to this ſtatute (*viz.* have entred, or held with force) the ſaid Iuſtice of peace, &c. ſhall reſeiſe the ſaid lands or tenements ſo entred upon, or holden, and put the party ſo put out, in full poſſeſſion of the ſame lands and tenements ſo entred or holden, as before.

Here we ſee that after ſuch forcible entry, or holding, ſo found by enquiry, the ſaid Iuſtice of peace, &c. ſhall reſeiſe the ſaid lands or tenements, and ſhall remove the force (*ſc.* all ſuch offendors as ſhall bee found in the houſe, or upon the lands, that either entred or held with force) and upon the prayer of the party ſo put out, the ſaid Iuſtice of peace ſhall reſtore him to his poſſeſſion againe. 8.H.6.9.

And herein the Iuſtice of peace needeth not to ſtay, or ſtand upon the right and title of either of the parties. See hereof a little after.

But no reſtitution ſhall be made, but where the forcible entry, or deteiner is firſt found by inquiſition. *Br. Forc.* 27.

Indict. ment, the forme.

Concerning this Inquiſition or indictment, the Iuſtices of peace ſhall doe well to peruſe and regard the ſame, to ſee if it be ſufficient; for the Iuſtices of peace ought not to award reſtitution, where the indictment ſhall appeare to them to bee any way inſufficient in the Law, either in matter or forme. Cron. 16.

1 Firſt therefore to have reſtitution, the putting out (by expreſſe words) muſt be in the indictment, and found by the inquiſition: for another man may enter upon me, and yet not put me out, and then there needeth no reſtitution to be made by the Iuſtices. Lamb. 138. 257.

And this putting out, is to be underſtood onely of houſe or land, and not of a rent, common, advowſon, and ſuch like, into which an actuall entry cannot be made: and therefore none ſhall have reſtitution but ſuch onely as are put out of houſe or land. See *ante ſub hoc tit.*

2 Alſo the indictment ought to expreſſe the quality of the thing entred upon, &c. *ſc.* whether it be a meſſuage, cottage, meadow, paſture, wood, or land earable: for if the indictment be, *quod manuforti intraverunt intenement. &c.* it is void for the incertainty, becauſe the word *tenementum* may extend to either of them. Lamb. 48. B. Forc. 49.

3 Alſo the indictment muſt have theſe words, *ſc. ad hoc extra teneat*, otherwiſe the partie ſhall have no reſtitution; and yet theſe words be not in the ſtatute, but without theſe words in the indictment, it may bee ſuppoſed and thought that he which put me out, hath left the poſſeſſion againe, or that I have gotten it againe; and then the reſtitution is needleſſe. 14.H.6.14. Br. Forc. 15.

So

So as in every ſuch indictment, theſe words are materiall, *ſc. expulerunt, & adhuc extra tenent*; and for lack of either of theſe words, no reſtitution ſhall be made or awarded.

Lamb.145. 4 Alſo one of theſe two words, *Manuforti*, or *cum multitudine*, ſeeme to be materiall in the indictment; unleſſe they be implyed by reciting the ſtatute of 8. *Hen. 6.* and concluding *contra form' ſtat. prædict.* or by ſome other words in the indictment. See the Preſidents herein.

For the forme to bee uſed in theſe indictments, ſee more *poſtea tit. Indictments.*

Cromp.162. If a man ſhall be reſtored upon an inſufficient indictment taken before the Iuſtice of peace, and this be removed into the Kings Bench, the Court there will cauſe the party to bee reſtored that before was put out by the Iuſtice of peace.

Cromp.165. & 166.b. 5 Alſo if error or inſufficiency be in the indictment, taken before Iuſtices of peace, and yet a precept or writ of reſtitution is awarded by them, any two of thoſe Iuſtices of peace which were preſent at the taking of the ſaid indictment, upon the prayer of the party, may (at another Seſſions, or out of the Seſſions) grant and award a *Superſedeas* to the Sheriſe to ſtay the ſame reſtitution, if the Sheriſe had not made reſtitution before the *Superſedeas* came to his hands.

Dyer 187. But no other Iuſtice of peace (beſides thoſe which were preſent at the taking and finding of the ſaid indictment) can grant a *Superſedeas* if the indictment were found at a ſpeciall Seſſions; And if it were found at the quarter Seſſions, yet the *Superſedeas* ſhall bee granted under the Teſte of one of thoſe Iuſtices only which were preſent at the finding of the force *ibidem.*

Cromp.165. A man is indicted that he entred with force, and held with force, and upon the traverſe, it is found that he entred with force, but not that he held with force, yet this indictment ſeemeth good enough, and the party ſhall be reſtored.

Ibid. So two are indicted of a forcible entry and deteiner, and upon the traverſe, it is found that the one entred with force, and the other held or detained with force, yet the party ſhall be reſtored. *Br. Forc.* 15.

If it be found by one Enqueſt, that *A.* put me out by force, and by another Enqueſt, that I did put out *A.* by force, either of us may pray to have reſtitution againſt the other: but he that is firſt reſtored is in the worſt caſe; for the other may have reſtitution afterwards, and then he that had reſtitution firſt is without remedy, by the hands of the Iuſtice of peace; ſaving that he may reenter, if he can, peaceably, or have his action. *Several Indictments.*

Cromp.166. Br.Forc.36.

If it be found by one Enqueſt, that *A.* put me out by force, and by another Enqueſt taken at the ſame Seſſions, that *B.* did put me out by force, I may chuſe upon whether of theſe indictments I will bee reſtored: and if I have reſtitution againſt *A.* and this bee returned, I cannot have reſtitution upon the other. But if (upon the writ of reſtitution) it be not returned, that I have reſtitution, then I may afterward have reſtitution againſt *B.* upon the other verdict, if *B.* hath reentred upon the firſt reſtitution made to me. *Marrow.*

Cromp.166.

A. is diſſeiſed, or put out with force by *B.* and after *B.* is put out with force by *C.* and all this is found by one and the ſame inquiſition; here *B.* may

B. may have reſtitution againſt *C.* (for *B.* hath more right to the poſſeſſion than *C.*) and then may *A.* have reſtitution againſt *B.* But upon this inquiſition if *A.* have reſtitution firſt, then *B.* ſhall not have any reſtitution: otherwiſe if theſe had been found by ſeverall inquiſitions.

Who ſhall award and make this Reſtitution. CHAP. 82.

AFter the force is found by the Enqueſt, the Iuſt. of P. (before whom the ſayd force ſhall be ſo found) may himſelfe put the party in poſſeſſion againe: Or hee may make his Precept (under his owne *teſte* alone) to the Sheriſe to do it. *Dyer* 187.

The forme of the Precept to the Sheriſe to make reſtitution See *poſtea tit. Preſidents, cap.* 129.

But no other Iuſtice of peace hath any authority (by the ſtatutes) to grant or award Reſtitution, but only hee or they, before whom the force was found by inquiſition. Nay the Iuſtice of *Oyer* or *Terminer*, nor the Iuſtice of Goale-delivery cannot grant reſtitution, nor the Iuſtices of peace at their generall Seſſions of the peace, cannot grant this reſtitution, except the indictment were found before them. And yet by ſome opinions, if it ſhall happen that the Iuſtice of peace before whom ſuch an indictment ſhall be found, before reſtitution made ſhall happen to die or to be removed, then may the reſidue of the Iuſtices of peace at their generall Seſſions of the peace grant a writ of Reſtitution. Dyer 187. 4. & 5. P. & M. Dalt. Co. 1. 153.

Alſo the Iuſt. of the Kings Bench (in regard of their ſupreme authority in all caſes of the Crowne) either upon Certificate, or delivery (to them made by the Iuſt. of P. before whom ſuch force was found) of the preſentment of ſuch force; or if the ſayd preſentment, or indictment ſhall bee removed before them by *Certiorari*, in both theſe caſes the Iuſtices of the Kings Bench may award reſtitution. See *antea, in the other title of Forcible Entry. Fitz. Entre* 36. *& Cro.* 159. Co. 9. 95. Co. 11. 63. 4. H. 7. 18.

But neither the Iuſtice of the Kings Bench, nor any other (beſides him or them that made the inquiry) can perſonally reſtore the party, but only by way of precept to the Sheriſe. Lamb. 160.

The Sheriſe (if need be) may take the power of the County, to execute the precept of the Iuſtice of peace herein.

And if the Sheriſe upon ſuch a precept, or upon a writ of Reſtitution (from the Seſſions, &c.) ſhall returne, that hee cannot make reſtitution for reſiſtance, &c. he ſhall bee amerced for making ſuch a returne, becauſe in ſuch caſe he might have taken the power of the County to aſſiſt him therein. See the like caſe *Fitz. Execution* 147. Lamb. 160.

Note, that the ſame Iuſtices or Iuſtice of peace before whom the force was found by Inquiſition, and which have granted his or their warrant to the Sheriſe to make reſtitution, may afterwards grant his or their *Superſedeas* to the Sheriſe, to ſtay the ſame reſtitution: But no other Iuſtice or Iuſtices of peace, hath or have authority to grant any *Superſedeas* in ſuch caſe, &c. See *Dyer* 123. *&* 187. *hic cap.* 81.

To whom Reſtitution ſhall be made. CHAP. 83.

THis reſtitution ought to be made to him that was put out, and to none other; for ſo are the words of the ſtatute.

RR. 38. Therefore if the father be put out by force, and dyeth, his heire ſhall not have reſtitution: yet here the Iuſtices may impriſon, and fine the offendors, for by ſuch forcible entry they have broken the peace. See *antea* in the other title of *Forcible Entry*.

Lamb. 156. Alſo, if after the death of the father, a ſtranger abateth, or entreth into his land by force, before the heire hath gotten actuall poſſeſſion in deed, the heire ſhall not haue reſtitution, becauſe he had but a poſſeſſion in law deſcended upon him.

Fitz. 258. b. The diſſeiſee doth put the diſſeiſor out with force, the diſſeiſor ſhall bee reſtored; for the right or title is not commonly diſputable, or materiall; but by the words of the ſtatute, he that is in ſuch ſort, (*ſc.* forcibly) put out, ſhall be reſtored.

Dyer 122. Yet it ſeemeth in this caſe that upon trauerſe tendred by the diſſeiſee, and his right appearing, the Iuſt. of peace may ſtay reſtitution. See hereof *poſtea ſub hoc tit.*

Br. For. 4. Alſo if the diſſeiſor be reſtored againe, yet the diſſeiſee may after re-enter peaceably, or haue his aſſiſe. *Fitz. Entre* 20.

Cromp. 163. But if the diſſeiſee ſhall enter peaceably upon the diſſeiſor, and ſo they both ſhall abide and continue there together for diuers dayes, and after the diſſeiſee doth put out the diſſeiſor with force, and is thereof indicted, here it ſeemeth the diſſeiſor ſhall not be reſtored; for the diſſeiſors poſſeſſion was avoyded in quiet manner at the firſt entry of the diſſeiſee, and ſo the diſſeiſor had no poſſeſſion, in the eye of Law, when he was put out.

Cromp. 162. & 164. If the diſſeiſee ſhall enter peaceably, the diſſeiſor and his family being abroad, and after the diſſeiſee ſhall keepe his poſſeſſion with force, the diſſeiſor ſhall not bee reſtored, by reaſon of the eigne title of the diſſeiſee, and for that he entred peaceably. See *antea* in the other title of *Forcible Entry*.

But here the diſſeiſee ſhall bee impriſoned and fined, for keeping his poſſeſſion with force; for forcible keeping or detaining, is as well prohited as forcible entry.

Cromp. 164. Finh. Aſſiſe. 418. And here note, that the being of a mans wife, children, or ſervants, in the houſe, or upon the land, do preſerve his poſſeſſion; but his cattell being upon the ground, &c. do not preſerve his poſſeſſion.

Lit. 140. Puk. 45. Alſo when two are in poſſeſſion of an houſe, &c. and the one claimeth by one title, and the other by another title, here the Law ſhall adjudge him to be in poſſeſſion, who hath the beſt right to the poſſeſſion: ſo that if *A.* ſhall wrongfully enter upon *B.* and they both ſhall continue in the houſe, and after *B.* ſhall put out *A.* with force; *A.* ſhall not be reſtored, for *A.* never gained any poſſeſſion by his entry.

Fitz. 149. d. Two Ioyntenants, or Tenants in common, and one of them doth forcibly put out the other out of his poſſeſſion, hee that is ſo expelled, may have an action of Treſpaſſe of forcible entry againſt his companion,

nion upon the ſtatute of 8. *Hen.* 6. and thereupon hee ſhall have a Writ of Reſtitution to reſtore him to his former eſtate: but what the Iuſtice of peace can do herein, *quare*, for that his entry and poſſeſsion is lawfull through the whole land, in reſpect of his owne moity and eſtate. See 8. *E.* 4. *fol.* 8. P.R. 19.

Two Ioyntenants be put out by force, and one of them only ſueth to have reſtitution, reſtitution ſhall be made unto him. Lamb. 151.

Whether a copiholder, leſſee for yeeres, or tenant at will, ſhall have reſtitution; ſee before *cap.* 77.

If leſſee for yeeres be put out of his Terme by force, and die, though after his death this force be found by Inquiſition, taken by a Iuſtice of peace, yet his Executors ſhall not be reſtored to that land, (by the Iuſtice) for that they are not the ſame perſon that was put out. P.R. 38.

What cauſes there may be for ſtaying the Iuſtice of peace from granting reſtitution. CHAP. 84.

ALthough the party thus to be indited for a force, ſhall not be heard nor ſuffered to give his title in evidence, to excuſe himſelfe of his forcible entry, or detainer, to ſave his fine due to the King for ſuch force (which fine he ſhall make though his right be never ſo good;) yet to the reſtitution (which the complainant ſhall demand, if the force be found) the defendant ſhall be heard to diſprove the title of the complainant, or what he can ſay otherwiſe for the ſtay of reſtitution, *quare*, and ſee before in the other title of *Forcible Entry*. Lamb. 151. Crom. 163. Br. Fort. 8. Dyer 122.

Now the defendant (or party indited) for the ſtay of reſtitution, may, at the time of the reſtitution to be made, plead or alledge any of theſe things following:

1 His quiet poſſeſsion by three yeeres together.

2 He may deliver to the Iuſtice of peace, or Court, a *Certiorari*, and this is a *Superſedeas* to them. See the ſtatute 21. *Iac. cap.* 8. *hic poſtea*.

3 He may tender his traverſe: but M. *Lambert* ſeemeth to doubt whether the party may bee admitted to his traverſe before the ſame Iuſtice of peace. And he thinketh it ſafer for the Iuſtice to make reſtitution, notwithſtanding the offer of traverſe; or rather he wiſheth the Iuſtice to deliver, or certifie the preſentment into the Kings Bench, and ſo to referre the further proceeding to them, &c. See *hic poſtea*. Lamb. 169.

4 He may plead the inſufficiency of the indictment. See *paulo antea*, *c.* 81.

5 He may plead the inſufficiency of any of the Iurors, *ſc.* for not having forty ſhillings freehold land *per annum*: and in this caſe Maſt. *Morrow* is of opinion, that the party ſhall have no reſtitution: Yet M. *Lam.* and M. *Crompton* ſeeme to be of the contrary opinion. *Lamb.* 155. *Cromp.* 165. *Ideo quare*.

And it ſeemeth (by the opinion of M. *Lambert*) that the Iuſtice of peace ought not to ſtay reſtitution, ſave only, either by alledging three yeeres quiet poſſeſsion, or by removing the record and preſentment into the Kings Bench by a *Certiorari*. *Lamb.* 156.

Three yeeres poſſeſſion. For the firſt, there ſhall bee no reſtitution awarded (upon any indictment of forcible entry, or holding with force) where the party indited hath been in quiet poſſeſsion by the ſpace of three whole yeeres together, next before the day of ſuch indictment found, if his eſtate bee not 31. Eliz. 11.

ended,

ended; and this the party indited may alledge to ſtay the reſtitution, and the reſtitution upon this ſhall bee ſtayed by the Iuſtice of peace untill it bee tried, if the other party will deny or traverſe the ſame. And if the ſame allegation bee tried and found againſt the party indited, then ſhall hee pay ſuch coſts and dammages to the other party, as ſhall bee aſſeſſed by the Iuſtices before whom the ſame ſhall be tried; the ſaid coſts and dammages to bee recovered and levied notwithſtanding by the courſe of the common Law. 31. *Eliz. cap.* 11.

Cromp. 164. P.R. 37. Alſo if a man who hath made forcible entry or deteiner be in doubt that he ſhall be indited thereof before the Iuſtice of peace (upon the ſtatute of 8. *Hen.* 6) and that thereupon reſtitution will be awarded againſt him, he may have a writ of *Certiorari* out of the Kings Bench, ready, and when the Bill of indictment is found, he may preſently deliver it to the Iuſtice of peace or Court; And this is a *Superſedeas* to them for to ſtay the reſtitution; for that upon this Writ, the ſaid inditement ſhall be removed from them into the Kings Bench. *Certiorari.*

And although the inditement be found after the *teſte* of the *Certiorari*, it is not materiall, for they be both the Kings Courts, &c.

6 H. 5. 16. But if a *Certiorari* commeth to the Iuſtices to remove an inditement of forcible entry taken before the Iuſtice of peace in the Country, and the party will not ſue to remove it, but ſuffereth it to lie ſtill, the Iuſtice of peace may proceed to grant reſtitution, notwithſtanding the writ, as *Hobert* the Kings Atturney ſaid in 6. *H.* 7. But *Keble* held opinion againſt him; and it ſeemeth rather, that the Iuſtice of peace ought *ex officio*, to ſend the inditement away, becauſe they are commanded ſo by the writ; and this writ is a *Superſedeas* of it ſelfe to the Iuſtices of peace to ſtay their proceedings; and if they ſhall proceed after, it is erroneous. *Br. Iudges.* 17.

Lamb 498. Cromp. 166.

Cromp 162. After reſtitution made by the Iuſtice of peace, if the other party doth remove the inditement by a *Certiorari* of a more eigne date than is the inditement, the Iu. of the Kings Bench may award reſtitution back againe: for upon the matter the Iuſtice of peace had no power to make reſtitution, for that the *Certiorari* hath relation from the date thereof.

Ibid. After reſtitution granted from the Seſſions, and delivered to the Sheriſe, the other party having a *Certiorari*, delivereth it alſo unto the Sheriſe after the Seſſions, the Sheriſe ſhall not ſurceaſe thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were delivered to any Iuſtice of peace, he may thereupon grant a *Superſ.* to the Sheriſe. And if reſtitution were made by the Sheriſe before the ſaid *Superſedeas* came to his hands, then the other party ſhall have reſtitution back againe, in the Kings Bench upon the inditement removed thither.

But for that Bils of inditement of forcible entry, or riots, being found before the Iuſt. of P. are oftentimes removed by writs of *Certiorari* out of the Chancery, or Kings Bench, by the meanes of the perſon indited, by meanes whereof ſuch offenders for the moſt part eſcape unproſecuted and unpuniſhed; (for that the party grieved will not undergo the travell or charge &c.) it is therefore enacted (by the ſtat. made 21 *Iac. Regis cap.* 8.) that all ſuch writs of *Certiorari* ſhall now be delivered at ſome Quarter Seſſions of the peace, in open Court; and that the parties indited, before the allowance of ſuch

ſuch *Certiorari*, ſhall become bound unto ſuch perſon which ſhall proſecute ſuch bill of Indictment againſt them, in the ſum of 10.li. with ſuch ſufficient ſureties, as the Iuſtice of peace, at their ſaid quarter Seſſions of the Peace ſhall thinke fit, with condition, to pay unto the ſaid proſecutors of ſuch bill of indictment (within one moneth after the conviction of ſuch parties indicted) ſuch coſts and dammages, as the ſaid Iuſtice of peace in the ſaid Seſſions of the peace ſhall aſſeſſe or allow. And in default thereof it ſhall be lawfull for the ſaid Iuſtices to proceed to tryall of ſuch indictments, any ſuch writ of *Certiorarie*, to remove the ſame indictment, notwithſtanding.

Traverſe. The tender of a Traverſe (to an indictment of Forcible entry, upon the ſtatute of 8. *H.* 6.) is no *ſuperſedeas* but in diſcretion; ſo as the Iuſtices of peace, or Court (notwithſtanding the Traverſe tendred) may grant, or may ſtay the reſtitution at their diſcretion, according as the truth of the right or title ſhall appeare to them: and ſo is the uſe of the Kings Bench. *Dyer* 122. *pl.* 34. Dyer 122.

Or elſe the Iuſtice of Peace (before whom the indictment was found) may after Traverſe tendred, certifie or deliver the indictment into the Kings Bench, or to the quarter Seſſions, and ſo refer the further proceedings therin to them:

But if the party indicted ſhall tender a Traverſe preſently, whereupon Reſtitution is ſtaied, and after hee ſhall not purſue his Traverſe with effect (but diſcontinueth it) and after doth tender another Traverſe upon Reſtitution prayed at another time; the Iuſtices of peace, or Court, ſhall doe well to proceed to grant reſtitution, notwithſtanding ſuch Traverſe tendred. Cromp. 148.

And it is the courſe of the Kings Beneh, that hee that tendreth the Traverſe there (upon ſuch an Indictment) ſhall beare all the charges of the tryall, and not the King nor he at whoſe ſuit the indictment was found: And the ſame reaſon ſeemeth upon an Indictment traverſed before Iuſtices of peace. Crom. 146.

But upon a forcible entry found, and a traverſe tendred, if the Iuſtices of peace will try the traverſe, it ſeemeth they ought to cauſe a new Iury to be returned (by the Sheriffe) before them, to try the ſame Traverſe; The which may be done the next day, but not the ſame day. *Crom.* 150. 152. *Vide hic cap.* 133.

Ryots. CHAP. 85.

IT may eaſily and manifeſtly appeare to all ſuch as have been converſant in our Chronicles, how pernitious and dangerous to this kingdome, unlawfull aſſemblies have beene in all precedent ages, yea, ſuch as at the firſt were very ſmall, and began upon very ſmall occaſion, yet not being repreſſed in time, grew to ſuch greatneſſe & height, that they afterwards put in hazard the ſtate and government of this Land: And therefore it is behovefull and good wiſedome for all Iuſtices of peace to indeavour by all good meanes to quench the beginnings & firſt ſparks of ſuch aſſemblies, as knowing, that for want of timely reſtraint, they may ſoon grow to the like danger againe.

Now

Now for the better ſuppreſſing of ſuch unlawfull aſſemblies, and partly for the better inabling of the Iuſtices of P. therein, there were three ſtatutes deuiſed and prouided ſpecially by the wiſedome of the Realme, and are remaining yet in force, that is to ſay, the ſtatute of 13. *H.* 4. 7. 2. *R.* 5. 8. and 19. *H.* 7. 13.

13.H.4.c.7. The ſtat. of 13 *H.* 4. authoriſing, nay upon a great penalty injoyning the Iuſtices of peace (together with the Sherife) to arreſt, remove, and puniſh the offendors.

But for that the aforeſaid ſtat. gave no remedy to the party grieued, if the Iuſt. of P. or Sherife ſhould make default, as alſo for the better ſtirring up of the Iuſtices in this buſineſſe, the ſtatute of 2. *H.* 5. was made, authoriſing the L. Chancellour of England (at the inſtance of the partie grieved) to grant a Commiſſion to inquire of the defaults of the two next Iuſt. of P. and Sherife, in not executing of the aforeſaid ſtatute of 13. *H.* 4. And withall, providing how the charges of the Iuſtices, ſpent about the ſuppreſſing, and inquiry of ſuch riots, ſhould be borne; and alſo limitting what puniſhment as well the offendors attainted of ſuch riots, as alſo all ſuch as ſhould not be ready to aſſiſt and ayd the ſaid Iuſt. to repreſſe ſuch rioters, ſhould ſuffer. 2.H.5.8.

And laſtly, for that the two former ſtat. did not expreſſe of what ſufficiencie the Iurors impanelled to inquire of riots, ſhould be; nor what iſſues they ſhould loſe, if they appeared not; nor any certaine puniſhment was inflicted upon the maintainers or imbracers of ſuch Iurors: Therefore the ſaid ſtat of 19. *H.* 7. was made. But ſo much of theſe things as concerne the Iuſtices of P. do appeare more particularly here before: And therefore now I will proceed in this buſineſſe. 19.H.7.13.

Firſt what ſhall be ſaid to be a Riot, Rout, or unlawfull Aſſemblie, within the meaning of theſe Statutes.

Br.Riot.5. Crompt. 68. P.R.15. WHen three perſons or more, ſhall come or aſſemble themſelues together, to the intent to do any unlawfull act, with force or violence, againſt the perſon of another, his poſſeſſions, or goods, as to kill, beat, or otherwiſe to hurt, or to impriſon a man; to pull downe an houſe, wall, pale, hedge, or ditch, wrongfully to enter upon or into another mans poſſeſſion, houſe, or land, &c. or to cut or take away corne, graſſe, wood, or other goods wrongfully; or to hunt unlawfully in any Parke or Warren, or to do any other unlawfull act (with force or violence) againſt the P. or to the manifeſt terrour of the people; if they onely meet to ſuch a purpoſe or intent, although they ſhall after depart of their owne accord, without doing any thing, yet this is an unlawfull aſſembly. Br.Riot.4.5. Lamb.179. 181. *Unlawfull aſſemblie.*

Br.4. If after their firſt meeting, they ſhall ride, go, or move forward toward the execution of any ſuch act (whether they put their intended purpoſe in execution, or not) this is a Rout. *Rout.*

And if they do execute any ſuch thing in deed, then it is a Riot. *Riot.*

Br.4.5. And yet by the opinion of ſome, a rout is onely, where ſuch a company (of three or more) are ſo aſſembled, for their owne common or proper quarrell (and not in the quarrell of any other perſon.) As where the inhabitants of a Towne do aſſemble together to pull downe an houſe, wall, pale, ditch, or other incloſure, pretending to have title of Common,

or a way there; or to beat a man that hath done them ſome publike offence. But yet the word *Rout*, ſeemeth to have a more large and ample meaning, as appeareth by the Statute of 18. *Ed.*3. *Stat.*1. ſpeaking of Routs that are brought in the preſence of the Iuſtices: and the ſtatute of 7. *R.*2. *cap.*6. treating of riding in great Routs. Br.45. Lamb.180.

Maſter *Finch* deſcribeth them ſhortly thus, *Fi. libro* 2.

An unlawfull aſſembly is when above the number of two ſhall aſſemble to doe any unlawfull act.

A Rout is when they ſet forward to doe it.

A Ryot is when they doe it indeed.

But at the Common Law (before the making of theſe ſtatutes) theſe facts and unlawfull aſſemblies committed or done, were of none other qualities in their natures, than other common treſpaſſes; although ſometimes by the diſcretion of the Iuſtices, a greater fine was aſſeſſed in ſuch caſes, than was for other common treſpaſſes.

Now in Ryots, Routs, and unlawfull aſſemblies, theſe foure circumſtances are to be conſidered:

Firſt the number of the perſons aſſembled.

Secondly, the intent and purpoſe of their meeting.

Thirdly, the lawfulneſſe or unlawfulneſſe of the act.

Fourthly, the manner and circumſtance of doing it.

The number For the number, there muſt neceſſarily be three perſons at the leaſt, ſo gathered together, or elſe it can be no ryot, rout, or unlawfull aſſembly, within the meaning of theſe ſtatutes.

By the ſtat. 1. *Marie* 12. *&* 1. *Eliz.* 16. if above the number of two and under 12. aſſembled together, had gone about unlawfully to kill any ſubject, or to caſt open any incloſure, deſtroy any Deere, Conies, Dovehouſe, or fiſh, to pull downe houſes, burne ſtacks of corne, or abate Rents, or prices of corne or victuals, if they had not departed upon Proclamation, but ſhould after attempt to do any of thoſe things, they were to be impriſoned by the ſpace of one yeare, without baile. *P.*20.

By the ſame ſtat. of 1. *M.*12. and 1. *El.* 16. if twelue perſons, or mo, aſſembled together, ſhould have intended, or gone about to change any laws, or to have done any of the former things, if they had not departed within one houre after Proclamation, it had beene felony in them all. P. 16. 17.

And by the ſame ſtat. if the number had beene 40. or above that had aſſembled together, to the intent to have done any of the former things contrary to thoſe ſtatutes, or any other ſelonious or rebellious act, if they had continued together three houres after Proclamation, it had beene felony; but theſe two laſt ſtatutes ſtand now diſcontinued. P. 3.1

But an aſſembly of an hundred perſons or mo (yea though they be in armour) yet if it be not in *terrorem populi*, and were aſſembled without any intent to breake the peace, it is not prohibited by any of theſe ſtatutes, nor unlawfull *See infra.*

The intent. For the intent: It ſeemeth it can be no ryot, &c. except there be an intent precedent, to do ſome unlawfull act, and with violence or force. Cromp.6. P.R.25.

And therefore if divers be aſſembled, and none of them do know to what end or purpoſe they are met, this can make no ryot or rout, till the intent be knowne. Lamb.183 Cromp.61.

If

If the maſter (intending to make a riot) taketh with him his ordinary ſervants, and maketh an affray, or other outrage with them, this is no riot in the ſervants, except their maſter had made them privy to his intent before, but the maſter only ſhall be puniſhed for this. Yet *quare* whether this ſhall be adjudged, or puniſhed in the maſter as a riot.

And in this former caſe it is not materiall, though the number of his ſervants that go with him are above his degree, ſo long as they be his houſhold ſervants. *Lamb.* 184. *P.R.* 25.

Cromp. 62. If divers being lawfully aſſembled, ſhall quarrell, or fall out upon the ſudden, without any former ſuch intent, this is no riot, but a ſudden affray.

Lamb. 184. If divers be at an Alehouſe, and without any intention of an affray, they ſuddenly fall together by the eares, this is no riot, but a ſudden affray, becauſe they had no ſuch intention before.

Ibid. If a Iury being together, ſhall fall out, and fight, this is no riot, becauſe they were lawfully aſſembled.

Alſo where there bee three or more gathered together, either to execute the juſtice of the Law, or for the exerciſe of valour, and triall of activity, or for the encreaſe of amity or neighbourly friendſhip, (and not being met with an intent to breake or diſturbe the peace, or to offer violence or hurt to the perſon of any) ſuch aſſemblies bee not prohibited by any of theſe ſtatutes, nor unlawfull; As if the Sheriſe, Vndersherife, or Bailiſe ſhall take power (what number they ſhall think good) to execute the Kings proceſſe, &c. it is lawfull. So of other officers. See more hereof *poſtea tit. Poſſe Comitatus.*

1 H. 5. 1. 8. Riots. 30

So it is a lawfull aſſembly which is gathered together to run at Tilt, &c. by the Kings commandement.

So the aſſemby of people, and their uſe of harneſſe upon Midſommer night in *London*, being only for diſport, is lawfull, and though it bee with a great aſſembly of people, and in armour, yet it being neither *in terrorem populi*, nor to do any act with force or violence againſt the peace, it is lawfull.

Alſo if divers do aſſemble and gather together, to drinke at an Alehouſe, or at a Chriſtmas dinner, or at a match of ſhooting, or ſuch lawfull diſport; or elſe to play at Football, Bucklers, Bearebaitings, Dancings, Bowles, Cards, or Dice, or ſuch like unlawfull games or diſports, this is neither Riot, Rout, nor unlawfull aſſembly within theſe ſtatutes, nor here prohibited; for theſe meetings uſually are not with any intent to offer or do violence or hurt to the perſon, poſſeſſions, or goods of any other; neither are they *malum in ſe*, they are in themſelves neither evill, nor unlawfull, nor prohibited by the Common Law, though otherwiſe ſome of them are prohibited by ſtatute, *Vide antea tit. Games unlawfull.*

But if any of the perſons aſſembled together for any the diſports above mentioned, (or for the like) came with any intent or purpoſe to breake or diſturbe the peace, or to offer violence or hurt to the perſon of any, and ſhall make an affray, or do other outrage, this ſeemeth to be a riot in ſo many as came with any ſuch unlawfull intent or purpoſe.

Lamb 184 P.R. 25. And if any of the perſons aſſembled together (to drinke or play) at an Alehouſe, or for any the diſports above mentioned, or the like, ſhall fall out ſuddenly (without any former intention of an affray) and in

that their falling out they ſhall betake themſelves to ſundry parts, and ſhall make an affray, it ſeemeth (by the opinions of ſome) that this ſhall be adjudged a Riot in ſo many of both ſides, as ſhall bee parties to that affray or quarrell: but *quare* hereof, for that it was without any ſuch intent before their ſaid aſſembly, and done only upon the ſudden, and upon a ſudden occaſion happning after their ſaid meeting; and againe, their ſaid aſſembly was at the firſt lawfull, or at leaſt not prohibited by any of theſe ſtatutes, not yet by the Common Law. *Co.* 11. 87.

But otherwiſe, if by agreement they ſhall meet againe, and fight afterwards, that maketh it a Riot, as being a new aſſembly upon the former quarrell, and ſo their ſecond meeting was upon an intent precedent to do an unlawfull act.

Where a great number ſhall aſſemble themſelves, or come into a houſe, and there detaine poſſeſſion of the houſe with force (though this be neither a publick fact, or force, done in the open ſight of the people, yet) this is a Riot, and the Iuſtices of peace puniſhable if they ſhall not remove ſuch force, and ſuppreſſe ſuch Riots. See the caſe of *Drayton Beſſet, hic antea tit. Forcible Entry.*

Concerning the lawfulneſſe or unlawfulneſſe of the act. CHAP. 86.

Lawfulneſs of the act.

NOte, that the lawfulneſſe or unlawfulneſſe of the thing done or intended, doth not alwaies excuſe or accuſe the parties to a Riot, &c. but ſo, that the manner and circumſtances of the act, muſt alſo be conſidered.

For every man may aſſemble company to aid him in his houſe, againſt iniury or violence: but if a man be threatned, that if he come to ſuch a place, he ſhall be beaten, in this caſe if he ſhall aſſemble any company to go thither with him (though it be to ſafegard his perſon) it ſeemeth to be within the compaſſe of theſe ſtatutes, and unlawfull. *Br. Riots* 1.

Every man in peaceable manner, may aſſemble a meet company (and may come) to do any lawfull thing, or to remove or caſt down any common nuſans done to them. Cromp. 44.

Every private man, to whoſe houſe or land any nuſans ſhall be erected, made, or done, may in peaceable manner, aſſemble a meet company, with neceſſary tooles, and may remove, pull, or caſt down ſuch nuſans (and that before any preiudice received thereby) and for that purpoſe, if need be, may alſo enter into the other mans ground. *Br. Nuſanz.* 14 & 33. Co. 5. 101. & 9. 55.

A man erects a Weare, Croſſe, a common River, (where people have a common paſſage with their Boats) and divers did aſſemble with ſpades, crowes of iron, and other things neceſſary for to remove the ſaid Weare, and made a trench in his land that did erect the Weare, to turne the water, ſo as they might the better take up the ſaid Weare, and they did remove the ſame nuſans; this was holden neither any forcible entry, nor yet any riot. 36. Eliz. Cromp. 46.

But in the caſes aforeſaid, if in removing any ſuch nuſans, &c. the perſons ſo aſſembled ſhall uſe any threatning words (as to ſay they will do it in ſpight of the other, or they will do it, though they die for it, or ſuch like words) or ſhall uſe any other behaviour, in apparant diſturbance

bance of the peace, then it ſeemeth to bee a ryot: and therefore where there is cauſe to remove any ſuch Nuſans (or to doe any like act) it is the ſafeſt not to aſſemble any multitude of people, but onely to ſend one or two perſons, or (if a greater number) yet no more than are needfull, and onely with meet tooles, to remove, pull, or caſt downe the ſame, and that ſuch perſons tend their buſineſſe onely without diſturbance of the peace, or threatning ſpeeches.

For the manner of doing a lawfull thing may make it unlawfull.

Alſo the manner of doing an unlawfull act by an aſſembly of people, may be ſuch (and ſo handled) as that it ſhall not be puniſhed as a ryot.

Lamb. 182. As if I ſhall aſſemble a meet company to carry away a piece of timber, or other thing (whereto I pretend a right) that cannot bee carried without a great number, if the number be not more than are needfull for ſuch purpoſe, although another man hath better right to the thing ſo carried away, and that this act be a wrong, and unlawfull, yet is it of it ſelfe no ryot, except there bee withall threatning words uſed, or other diſturbance of the peace.

For the manner and circumſtances. CHAP. 87.

AS there muſt neceſſarily be three perſons at the leaſt, aſſembled together, to make a ryot, &c. ſo their being together and their demeanor muſt be ſuch, as ſhall or may breed ſome apparant diſturbance of the peace; either by threatning ſpeeches, turbulent geſture, ſhew of armour, or actuall force or violence (to the terrour and fearing of the peaceabler ſort of people, or to the emboldning and ſtirring up of ſuch as are buſie headed, and of evill diſpoſition, by ſuch facts;) or elſe it can be no ryot, &c. For, as I ſaid before, the manner of doing a lawfull thing, may make it unlawfull, *& è converſo.* *The manner*

Lamb. 182. And therefore if divers in one company, going to the Church, Faire, or Market, ſhall go armed; or one going to the Seſſions, or other like aſſembly, ſhall go with his ſervants in harneſſe (to the terrot of the people) though he or they have no intent to fight, or to commit any ryot, yet this is a Rout by the manner of his or their going, being needleſſe, diſordered, and againſt the Law. See the ſtat. 2. *Ed* 3. *cap.* 3.

P. Sumor. 1.

Cromp. 64. But in the former caſes, if they had gone in privie coats of plate, ſhirts of male, or the like, to the intent to defend themſelues from ſome adverſarie, this ſeemeth not puniſhable within theſe ſtatutes, for that there is nothing openly done *in terrorem populi.*

31. Eliz. Cromp. 64. One *N.W.* together with fourteſcore perſons, came with ſpades, mattocks, piſtols, ſwords, and daggers, in the night, to a peece of ground (where Sir *Thom. St.* had made a great Weare croſſe over the river of Trent, in the county of Nottingham, to the great Nuſans of paſſengers there, &c.) and there they made one or two little trenches to let out the water, &c. And though it were lawfull to make the trenches, and to debruſe the Nuſans, yet for that they came with ſuch number, and weapons, they were deeply fined in the Starre-Chamber. 36. *Eliz.*

31. & 32. El. Cromp. 64. Alſo one *Kemp* Lord of a Copihold, did enter with twenty perſons, and cut his Copiholders corne with force, for that his Copiholder would

would not compound with him for his fine, and although the entry of the Lord was holden lawfull, yet punishable as a ryot in regard of his number and force.

In all cases where three (or more) shall enter into lands, &c. with force (upon the possession of another) where their entry is lawfull, yet it is a ryot, by reason of number and force; for the statute of 5. *R.* 2. prohibiteth the entry with force, or with multitude of people, although the entry bee (otherwise) lawfull. Cromp. 64.

What persons may commit a Ryot, &c. CHAP. 88.

IF a number of women (or children, under the age of discretion) doe flock together for their owne cause, this is no assembly punishable by these statutes, unlesse a man of discretion moved them to assemble for the doing of some unlawfull act, as M. *Marrow* held.

Yet certaine women, that had apparelled themselves in mens apparell, and had pulled down ryotously a lawfull inclosure, were worthily punished for the same in the Star-Chamber, as M. *Lambert* reporteth. Lamb. 184. Cromp. 62.

Also women and children may commit a force, may commit larceny, and may be bound to the peace, as breakers of the peace. *Vide antea tit. Surety for the peace, and Forcible Entrie. & Dect. & Stud.* 147. 148.

Concerning children, and their punishments in such cases, See *his cap.* 77. *et* 118.

Also women covert are holden to be within the statute of *Mert. cap.* 6. for ravishment of wards; and within the stat. of Westmin. 1 *cap.* 20. *de Malefactoribus in parcis*: and within the statute of 8. *H.* 6. of Forcible Entry: and within the statutes of 1 *El. cap.* 2. and 23. *El.* for Recusancy, although they be not named within any of these statutes. Co. 3. 72. b. 11. 61.

Also if a woman couert shall commit any ryot, or doe any trespasse or other wrong, she is punishable for it; and for a trespasse done by the wife, or for a scandal published by her, the action lyeth against both the husband and wife, *sc.* an action of trespasse, or of the case, shall be brought against the husband and the wife, and there the husband is chargeable to the dammages, or fine, because hee is a party to the action and judgement, (See *paulo antea tit. Forcible Entry*) but if a woman couert without her husband bee indicted of a Trespasse, Ryot, or any other wrong, there the wife shall answer, and bee party to the judgement onely; and in such case the fine set upon the wife shall not bee levied upon the husband; yet after the husbands death it seemeth such dammages or fine shall then bee levied of the wife her selfe; And as for imprisonment, or other corporall paine, it shall be inflicted upon the wife onely, and not upon the husband for his wives act or default. Co. Litt. 5 Br. 670. 4 R. 426. Co. 11. 6. b. 22. ass. 8. 43 E. 3. 18. Br. Imp. 110.

And note, that any subject of this Realme, for any injury done to his person, or done to him in his lands, or goods, may pursue, and have the justice of Law, against any other subiect, bee hee bond or free, bee it a woman or an infant, be they religious persons, or bee they persons excommunicate, or outlawed, or other person whatsoever, without any exception, &c. for the King (by the stat. of *Magna Charta*, *ca.* 29.) saith, *Nulli vendemus*,

mus, nulli negabimus, aut differemus justitiam, vel remedium. Dyer 104.

Lamb. 185. But if a Mayor and Aldermen, or Bailiffe and Burgesses. or the Fellowes of any other Society, doe assemble in their common quarrell, and make a ryot, or rout, this shall be punished in their owne private naturall persons, and not in the body politike. *Br. impr.* 95.

High Treason. CHAP. 89.

Glanvill. HIgh Treason (called in Law, *Crimen læsa Maiestatis*) is a grievous offence, done or attempted against the estate regall, *viz.* against the King (the head, life, & ruler of the Common wealth) in his person, the Queene his wife, his Children, Realme, or Authority; as,

To compasse the death of the King, the Queene his wife, or of their el-
25. E. 3. c. 2. F. 2. dest sonne and heire. 25. *E.* 3. *cap.* 2. *Fi.* 22.

To compasse the death of the father or mother of the King or of any of the Kings children, although that such compassing be not brought to effect, yet it is Treason, by *Britton* in his title of *Appeales*, *fol.* 39. *Stamf. fol.* 1. *p.*

To compasse the death of an usurper of the Crowne, is Treason, for which the offendor may bee arraigned in the time of another King, as appeareth, *Br. Treas.* 10.

Stamf. 2 h. Co 2. 18. Br. 24. 25. To intend or imagine the death of the King or Queene, though they bring it not to effect, *sc.* if they shall declare this by an open act, whereby it may be knowne, or to utter it by words or letters, is treason.

To intend to deprive, depose, or disinherit the King, is high Treason, if it may appeare by any open act; for no Crowne can be taken from a Kings head, without losse of his head and Crowne both, sooner or later, as his Majestie hath observed in his *iust defence of the Right of Kings*. See *Bri. and Stamf.* 1. *p.*

So to say that hee will be King, after the Kings death, is high Treason. See the Duke of Buckinghams case, 13. *H* 8. *fol.* 12.

M. *Glanvill* also, and M. *Bracton*, say thus, or to this effect: *Si quis machinatus fuerit, vel aliquid fecerit in mortē Domini Regis, vel ad seditionem Regis, vel exercitus sui, vel consenserit, consilium ve dederit, vel auxilium procuraverit, seu præstiterit, licet id quod in voluntate habuit, non produxerit ad effectum, tenetur tamen criminis læsa Maiestatis.* See *Glanv. lib.* 14. *fol.* 110. *& Bracton, lib.* 2. *Stamf.* 1. *v. x.*

And so note, that treason may be committed by imagination, and a resolution to performe or doe an act, although it be not brought to effect; as in these former cases. This was the case of *Bigthan* and *Teresh*, who were both hanged, onely for that they had a will to kill King *Ahashuerosh*, and sought to lay hand on him, *Ester* 2. 21. 22.

Co. 124. If one that is *non Compos mentis*, doe kill, or attempt to kill the King, it is in him high treason; whereas petty treason, homicide, or larceny, shall not be imputed to such a person. *Vide stat.* 33. *H.* 8. *cap.* 20.

One Constable pointed to another, saying to his friends, Behold King
Dyer 128. Abr. *Ed.* (who was then dead) and for those words he had judgement and execution as a traitor, *Dyer* 128. but *Co.* 7 10. observeth that the words were accompanied

accompanied with other circumſtances, which appeare not in our uſuall printed bookes.

Alſo to deflower the kings wife, his eldeſt daughter being unmarried, or his eldeſt ſonne and heires wife, is high treaſon. 25. *E.* 3. 2. P. 1.

So is it, if any man ſhall deflower any other of the kings daughters, yea or the Nurſes of any of the kings children, as M. *Britton* writeth, *fol.* 43: *Stamf. fol.* 1. *q.* P. 2.

To levy warre againſt the King, &c. in this Realm, is high treaſon: Note that to detaine or hold a caſtle, or fortreſſe, againſt the King, is to levy war againſt the king. See *Br. Treaſon* 24. 25. *E.* 3. *cap.* 2.

So to conſpire to levy war againſt the King, &c. is high treaſon.

Alſo to detaine, keepe, or with-hold from, or againſt the King, any of his ſhips, or Ordnance, or malitiouſly to burne, or deſtroy any of the Kings ſhips; or malitiouſly to barre any Haven within any of the Kings dominions; all and every of theſe ſeeme to be included within theſe words [To levy war againſt the King] and ſo to be high treaſon. See *Br. Treaſon* 24. *& ſtat.* 14. *Eliz. cap.* 1. *& quære.* Dyer 98. Dyer 298.

To ſell any armour to the enemy; or to furniſh the enemy with weapon or munition, have beene accounted crimes treaſonable. *W. Segar Norroy, of Honour Military and Civill, pag.* 141

If any perſon having a charge, ſhall yeeld the ſame up unto the enemy, this alſo is a crime treaſonable, *Ibid.*

So all explorators or ſpies that bewray our ſecrets, and informe the enemy thereof, are to be accounted traitors. *Ibid.*

To practiſe with a Governour of another Country to invade this Realme, is high treaſon, although ſuch practice be not put in ure. *Dyer* 298.

So to kill one that is ſent in the Kings meſſage, 22. *Aſſ. Stamf.* 1. 1. *Br.* 13.

To incounter in fight, and kill ſuch as are aſſiſting to the King in his warres, or ſuch as come to helpe the King, is high treaſon. 45. *Ed.* 3. 25. *Br. Treaſ.* 7. 22. E. 3. 17. Stamf. 14.

Theſe two laſt caſes were holden to be high treaſon, before the ſtatute of 25. *Ed.* 3.

To ſuccour the Kings enemies is treaſon. *Thorp* 22. *Ed.* 3. *fol.* 49.

To be adherent to the Kings enemies (ayding them, or giving them comfort, in his Realme, or elſewhere) is high treaſon. See *Br. Treaſon* 1. *&* 13. *Fitz. Triall,* 54. *&* 25. *E.* 3. *cap.* 2. P. 1.

If a ſubject ſhall goe beyond the ſea, and there ſhall adhere, or joyne himſelfe with the Kings enemies, and there (in ſuch enmitie) ſhall die, or bee ſlaine, this ſeemeth to be treaſon, and to be an attainder in law, without any more, &c. by the ancient common law of this land: as appeareth, 8. *E.* 3. *Fitz. Dower* 106.

So if a ſubject ſhall ioyne in battell within the Realme, to the kings enemies, and ſhall be ſlaine in the field, by the ancient common law of this Realme he ſhall forfeit his lands, goods, and chattels, and his bloud ſhall bee corrupted, without any other judgement, for that hee himſelfe is the cauſe that he cannot come to the tryall of Law in his life time. *Pl.* 262. *a. &* 263. *a. Vide ſtat.* 34. *E.* 3. *cap.* 12.

But if an alien enemy come to invade this Realme, and bee taken in warre, Br. Treaſ. 39

Dyer 145. v.dc. warre, he cannot be indicted of treaſon, but he ſhall be put to death by martiall law, *C.7.6.b.* Otherwiſe it is of an alien, whoſe King is in league or at peace with our King, he ſhall be indited and arraigned of treaſon, and ſhall have judgement accordingly. An Engliſh traitor pleading that he is a ſubject to a forreine Prince, ſhall notwithſtanding (upon a *Nihil dicit* recorded) have judgement as a traitor. *Dy.* 300.

If any perſon ſhall ioyne the Armes of England with his owne Armes, it ſeemeth to be high treaſon. See 38. *H.* 8 *Br. Treaſon.* 2.

If any perſon ſhall counterfeit the Kings Armes, or the Armes of this Realme, it is high treaſon, as M. *Kitchin* hath it, *fol.* 12.

P.1.2. 1.M.6. Br.3.17. To counterfeit the Kings great ſeale, ſigne manuall, privy ſigner, or privy ſeale, is high treaſon, 25. *Ed.3.cap.2.* & 1. *Mar.6.* But before the ſtatute 25. *E.* 3. theſe were petty treaſon by the Common Law. *Fi.*

So to take an old ſeale from another Patent, &c. and put it to a new Patent, &c. yet *quare* whether this be Treaſon, or but miſpriſion. M. *Stamf. fol.* 3. *c:* ſaith, that it was adiudged to bee Treaſon in his time. *Vide ibidem.*

Alſo it is Treaſon in ſuch, as without authority ſhall ſet the Kings ſeale upon any writing. *Speculum Iuſt.*

Quære of ſuch as ſhall fraudulently thruſt a writing (among others) to the ſeale, and ſo get it ſealed.

To counterfeit the Kings mony (*ſc.* the coyne of this Realme, or ſuch as by the Kings authority is coyned within this Realme, or within the Dominions thereof) is high treaſon. *Stamf.* 3. *c.* 25. *E.* 3. *cap.* 2.

So to counterfeit any other coyne of any other Realme, which (by the Kings Proclamation, or by act of Parliament, or permiſſion) is made currant within this Realme, is high Treaſon. 1. *Mar. Par.* 1. *cap.* 6. *Co. L.* 208.

So to forge or counterfeit ſuch coyne, though hee uttereth it not. *Stamf.* 3. *d.*

Br.37. P.4. 14.El.3. To forge or counterfeit any coyne which is not currant in this Realme, is miſpriſion of treaſon.

5.El.11. 18.El. P.56. To clip, waſh, round, file, impaire, diminiſh, lighten, or falſifie any coyn or mony of this Realme, or any other Realme, allowed or ſuffered to bee currant within this Realme, is Treaſon.

1.& 2.P. & M.P.3. 25.E.3.c.2. Finch. To bring from beyond the ſea, into this Realme, any falſe or counterfeit coyne, or mony made in any other Realme, like to the coyne of this Realme (or like to the coyne of any other Realme, being currant within this Realme) knowing it to bee falſe, to the intent to merchandiſe therewith, or to make payment thereof, in deceit of the King and his people, is high treaſon: but to bring ſuch mony into England out of Ireland, is but miſpriſion, though he know it, and uttereth it, *Quia Hibernia eſt quaſi membrum Angliæ.*

3.H.7.f.10. Br.29. 3.H.7.f.10. If he which by the Kings warrant doth coyne mony (either in England, Ireland, or elſewhere) maketh it much leſſe in weight than the ancient ordinance; or coyneth falſe metall, it is treaſon. *Br. Treaſon.* 19.

So to coyne any mony not having authority, or warrant to do, is high treaſon. *Speculum Iuſtic.*

To coyne Farthing Tokens, is no treaſon, but is puniſhable in the Star-Chamber:

Chamber: And ſo Sir *Francis Harvey* deliuered it in his charge at Cambridge Sommer Aſſiſes *An.* 1631.

To vtter falſe money made within this realme, or other the Kings dominions, knowing thereof, is miſpriſion of treaſon. 3.H.7.f.10. Dyer 266.

The booke called the Mirrour of Iuſtices (or *Speculum Iuſticiariorum*, written by M. *Andrew Horne*) diuides theſe former treaſons into two ſorts, *ſc. Le Crime de Majeſtie, & Le Crime de Fauſonnerie.*

Le Crime de Majeſtie. 3. *x.* { Such as ſhall kill the King, or ſhall compaſſe to do it. / Such as ſhall do or procure any thing, *ad ſeditionem domini Regis, vel exercitus ſui.* / Such as ſhall deflower the Kings wife, his daughter, or the wife of the Kings heire.

Le Crime de Fauſonnerie is in two manners, *ſc.* by { Falſifying the Kings ſeale, / Falſifying his money.

Alſo to kill the Kings Chancellor, Treaſurer, Iuſt. of either bench, Iuſt. in Eyre, Iuſt. of Aſſiſe, or Iuſt. of *Oyer* and *Terminer*, being in his place, doing his office, is high treaſon. 25 Ed. 3. 2. P. 1.

But becauſe many other like caſes of treaſon might happen, &c. it was (by the ſtat. 25. *E.* 3. *ca.* 2.) accorded, that if any other caſe ſuppoſed treaſon which is not in that ſtatute ſpecified, doth happen before any Iuſtices, the Iuſtices are not to proceed thereupon, vntill the cauſe be declared before the King and his Parliament, &c.

Alſo by the ſtatute of 1. *Mar. Parliament* 1. *& Seſſio.* 1. it is ordained, that no act, deed, or offence, made treaſon, pettie treaſon, or miſpriſion of treaſon, by any act of Parliament or ſtatute, ſhall be taken, deemed, or adjudged to be high treaſon, pettie treaſon, or miſpriſion of treaſon, but onely ſuch as be declared to be treaſon, pettie treaſon, or miſpriſion of treaſon, in or by the ſaid ſtatute made 25. *E.* 3. &c. any ſtatute made before or after the ſaid ſtatute of 25. *E.* 3. or any other declaration or matter to the contrary notwithſtanding.

Note, that the counſellors, procurors, conſenters, abbettors, and aiders to any of the aforenamed treaſons, bee all within the compaſſe and danger of high treaſon, for in treaſon all the offendors be principals. Stamf. 5. P. 2, 3, 4, 5, 6. 19. H. 6. 47.

To conceale or keepe ſecret any high treaſon, is miſpriſion of treaſon, 1. *E.* 6. *c.* 12. 5. *& 6. Ed.* 6. *cap.* 11. *& 1. El. cap.* 6. *ſ.* when a man ſhall conceale it and not diſcouer it to the King, or to ſome of the Kings councell, or to ſome other magiſtrate. P. 2. 1. & 2. P. 2. M. c. 10.

And all receiuers and acceſſaries (to high treaſon) after the offence, ſeeme to be in caſe of miſpriſion. *Vide poſtea tit. Acceſſorie.*

To ſet at large vnlawfully, any perſon that is committed to priſon, ward, or cuſtody for treaſon, is treaſon by the Common Law. See 1. *H.* 6. *fol.* 5. *Br. Treaſon* 11.

If one that is in priſon for felony ſhall breake the priſon, whereby a Traitor being in the ſame priſon ſhall eſcape, this is treaſon (in him that broke the priſon) by the Common Law. *Vide* 1. *H.* 6. 5. *hic cap.* 91.

So voluntarily to ſuffer any perſon to eſcape that is committed to priſon, or but vnder arreſt for treaſon, this is treaſon by the Common Law, *Stamf.* 32. 1.

If two or more do conſpire to commit high treaſon, and ſome or any one Dyer 98. Co. 1. 28.

one of them after doe commit and execute it, this is high treason in them all by the Common Law.

Co. 8. Pref. Note also that the aforesaid statute of 25 *E.* 3. *cap.* 2. is but a declaration and explanation of the common law before, for all the said treasons in the said statute mentioned, were treason by the ancient common law of this Realme, before the making of the said statute.

Treasons by statute. Since which time of King *Edw.* 3. divers other offences were made treason, as appeareth by the statutes 22 *Rich.* 2. 2. *H.* 5. 6. 3. *Hen.* 5. 6. 8. *H.* 6. 6. 4. *H.* 7. 18. 22. *H.* 8. 9. 26. *H.* 8. 13. 27. *H.* 8. 2. 28. *H.* 8. 10. & 18. 31. *H.* 8. 8. 32. *H.* 8. 25. 33. *Hen.* 8. 21 35. *Hen.* 8. 1. and first *Ed.* 6. 12. all which were repealed againe by the said statute made 1. *M. Parliament* 1. or before, as is aforesaid.

Also since the aforesaid statute of repeale, there have beene divers other offences made or declared to be treason, whereof some were but as an addition to, or an exposition of the treasons before specified, and mentioned in the said statute of 25 *E* 3. *c.* 2. *viz.* the statutes 1. *M.* 6. 1. & 2. *P.* & *M.* 11. 5. *El.* 11. 18. *Eliz.* 1. & 14. *Eliz.* 3. by which five severall statutes last mentioned, the counterfeiting of the Kings seale, or abusing his coyne, and bringing in of false coyne, &c. are in some particulars more full prohibited than before, as may herein before appeare.

There are also divers other offences made high treason (by other statutes made since the beginning of the Raigne of Q. *Eli.*) and those specially made for the preservation of the said Queene, her heires and successors, and of the dignity of the imperiall Crown of this Realme, and for the avoyding of the dishonours, inconveniences, and dangers growing to the whole estate, by meanes of the iurisdiction of the See of *Rome*, heretofore usurped within this Realme, &c. as hereunder appeareth.

The Bishop of Rome. First, the maintaining or extolling the authority of the Bishop or See of *Rome*, within any the Kings dominions, and the procurors, counsellors, ayders, and maintainers thereof, and every of them.

For the first offence they shall incur the danger of a *Præmunire*, the second offence is high treason.

Also the bringers over of any bookes, that shall maintaine, set forth, or defend any such authority; and the readers and hearers of such bookes, that shall iustifie them.

And such as shall deliver any such bookes to others, with allowance and liking of the same.

Dyer 282. Co. 7. pref. And the Printers and utterers of such bookes within this Realme, all and every such offendors are (by the Iudges) resolved and construed to be within the meaning of the same statute of 5 *El. ca.* 1. and their first offence to be a *Præmunire*, the second high treason.

11 *El.* 1. Crowne. 28. Againe the refusall of the oath for the kings supremacy (in all causes and over all persons, &c.) after lawfull tender thereof made, the first refusall is a *Præmunire*, the second refusall is high treason.

Jac. 4. Recus. 45. The second refusall of the oath of Allegeance, being tendred according to the statute, is a *Præmunire*, &c. 7. *Iac. c.* 6.

3 *El.* 2. Crown 2. prem. 5. Againe, to obtaine or get from *Rome*, or from any claiming authoritie from thence, any Bull or writing, the effect whereof is, to absolve and reconcile all those that will forsake their due obedience to the king and

and yeeld themſelves to the B. of *Rome*,) or to give or take abſolution, by colour of any ſuch Bull; or to grant or promiſe any ſuch abſolution or reconciliation; or to uſe, publiſh, or put in ure, any ſuch Bull; every ſuch act ſhall be high treaſon, as well in the offendors, as in the procurors, abbettors, and counſellors to the fact.

And all aiders, comforters, and maintainers of any ſuch offendor, after the fact ſhall incurre a *Præmunire*. Ibid.

To conceale ſuch Bull (or writing) or ſuch abſolution offered them, and not within ſixe weekes to diſcloſe it to ſome of the Kings privy Councell, is miſpriſion of treaſon. 13. El. 2. P. Rome 4.

To purchaſe or purſue (in the Court of *Rome*, or elſewhere) any Excommunication, Bull, or other Inſtrument againſt the King his Crown, or Realme; or to bring them within this Realme; or to receive them, or to make notification, or any other execution thereof, within the Realme, or without, every ſuch offendor, their procurers, maintainers, abbettors, and counſellors, ſhall incurre the danger of a *Præmunire*, 16. *R.* 2. *cap.* 5.

To practiſe (beyond the ſeas, or upon the ſeas, or elſewhere within the Kings dominions) to abſolve, perſwade, or withdraw any ſubiect, or any within any his Highneſſe dominions, from their obedience to his Maieſtie; or to reconcile them to the Pope, or to draw them to the Romiſh Religion, (by argument, bookes, or otherwiſe) for that intent; or to move them to promiſe obedience to the See of *Rome*, or to any other Prince, to be had or uſed within the Kings Dominions; every ſuch perſon, and their procurors, ayders, counſellors, and maintainers, knowing the ſame, are all in caſe of high treaſon. 23. El. 1. 3. Iac. 4. P. Rome 5. 3 Iac. 4.

To bee willingly abſolved, perſwaded, withdrawne, or reconciled, as aforeſaid, or to promiſe any ſuch obedience, every ſuch perſon, and their procurers, counſellers, ayders, and maintainers (knowing the ſame) ſhall be adjudged Traitors, except they ſubmit themſelues, according to the ſtatute, within ſixe dayes after their returne into this Realme, &c. *Vide antea tit. Recuſants.* 23. El. 1. 3 Iac. 4. P. Rome 4. P. Rome 5. P. Rome 6.

To conceale any ſuch offence, and not within 20 dayes to diſcloſe it to ſome Iuſtice of peace, or other higher officer, is miſpriſion of treaſon by the ſtatute 23. *El.* 1. *P. Rome* 8. 27. El. 2. P. Ieſuits.

Againe, for for any Ieſuite, Prieſt, or other Eccleſiaſticall perſon (borne within any the Kings Dominions) and made by any authority from the Biſhop of *Rome*, to come into, be, or remaine, in any of the kings Dominions, contrary to this ſtatute, is high treaſon.

To receive, relieve, ayde, or maintaine any ſuch Ieſuit, &c. (being at liberty, and knowing him to be a Ieſuit, &c.) is felony, without benefit of Clergy. 27. *El. cap.* 2. P. Ieſuits 101. Ibid.

To conceale ſuch a Ieſuit, &c. *ſc.* not to diſcover them to ſome Iuſtice of peace, or other higher officer, within twelve dayes, is puniſhable by fine and impriſonment.

And the Iuſtice of peace, or other ſuch officer, to whom ſuch a perſon ſhall be diſcovered, if within 28 dayes they give not information thereof to ſome of the kings Councell, &c. they ſhall forfeit 200 markes. See *plus tit. Recuſants.* 27. El. 2. P. Ieſuits.

It

29.El.2. P. Ieſuits 4. If any of the Kings ſubiects (not being Ieſuit, or Eccleſiaſticall perſon) which are or ſhall be brought up in any Seminary, or Colledge of Ieſuits, or Seminary beyond the ſea, ſhall not (within ſix months after Proclamation in that behalfe to be made in London, &c.) returne into this Realme, and within two daies after ſuch returne (before the Biſhop of the Dioceſſe, or two Iuſtices of peace of the County where he ſhall arrive) ſubmit himſelfe to the Kings Lawes, and take the oath of Supremacy, (ſet forth 1. *El.* 1.) then every ſuch perſon which ſhall otherwiſe returne or come into this Realme, or any other his Maieſties Dominions, without ſuch ſubmiſſion, ſhall be adiudged a Traitor.

For (as one ſaith) it may iuſtly be feared, not only of all Ieſuits and Seminary Prieſts, but alſo of all ſuch other (Ieſuited) perſons whatſoever, that ſhall come into his Maieſties Dominions, or returne into this Realme, contrary to this ſtatute, That it is not Faith, but Faction; not Truth, but Treaſon; not Religion, but Rebellion, which is the cauſe of their comming.

31.El.2. P. Ieſuits 5. To convey, deliver, or ſend, yeeld, or give any reliefe, to or for any Ieſuit, or Prieſt, &c. or other perſon abiding in any Seminary beyond the ſeas, &c. is a *Præmunire*.

13.El.2. P. Rome. 5. To bring into this Realme any *Agnus Dei*, Croſſes, Pictures, Beads, or ſuch like ſuperſtitious things, conſecrated by authority from the Pope, and to deliver them, or to offer or cauſe them to bee delivered to any ſubiect of this Realme, is a *Præmunire*, as well in ſuch perſon, as alſo in them that ſhall receive any ſuch thing, to the intent to uſe or weare it.

13.El.2. P. Rome 6. The perſon to whom ſuch *Agnus Dei*, &c. ſhall bee offered, muſt apprehend the party offring the ſame, and bring him to the next Iuſtice of peace; or elſe muſt within three daies diſcloſe his name and place of aboad to the Ordinary, or ſome Iuſtice of peace in that County: and if he received any thing, he muſt deliver the ſame within one day to a Iuſtice of peace of that County, where the party ſo receiving the ſame, ſhall then be reſiant, or happen to be. And that the Iuſtice of peace within 14 daies muſt diſcloſe the ſame to one of the Kings Maieſties privy Councell, upon danger of a *Præmunire*.

Miſpriſion. CHAP. 90.

THere be certaine offences which by the Common Law are Miſpriſion of Treaſon, or at leaſt puniſhable in the ſame degree, or in a higher degree.

As

To draw a ſword to ſtrike a Iuſtice ſitting in place of Iudgement, is Miſpriſion of Treaſon. 23.E.3.19. Stanf. 38.b.

So

To ſtrike a Iuror in the preſence of the Iuſtice ſitting in place of Iudgement. *Br. Contemps 9. & Fitz. Iudg. 174. Fi.* P.R.177. Ibid.

So to ſtrike another in Weſtminſter Hall, ſitting in any of the Kings Courts there. *Dyer 188. Fitz Cor. 280. Fi.* Stanf. 38.c.

So it ſeemeth to draw any weapons (therewithall to ſtrike any perſon) in the preſence of the Iuſtices, or to make any affray in their preſence. *Br. Paine 16. Stanf. 38.*

So to reſcue any ſuch offendor. *Ibid.*

So to ſtrike any perſon in the Kings Court, (Pallace, or other houſe,)

the King being then in his Court. And judgement was given accordingly in ſuch caſe, upon a Knight, *Ann.* 33. *Hen.* 8. for ſtriking another at Greenwich, the King being there, *Br. Ibid.* Yet now ſee the ſtatute of 33. *H.* 8 12. That ſuch an offendor in the Kings Pallace (although he ſhall draw blood by ſtriking there) hee ſhall forfeit neither the profits of his land, nor his goods, but ſhall loſe his right hand, be impriſoned, during his life, and ſhall pay fine and ranſome at the Kings pleaſure: And ſo now ſuch an offence done in the Kings Pallace, ſhall not have ſo grievous a puniſhment, as if it be done in Weſtminſter Hall: ſee *Stamf.* 38. *d.*

But in the former caſes, the offendor ſhall have judgement as in Miſpriſion of treaſon, and beſides, ſhall have his right hand cut off. *Br. Paine* 16. *Fitz. Forf.* 21. *Dyer* 188. Ibid.

If one of the Kings Iuſtices do arreſt one who made an affray before him ſitting in place of Iuſtice, and a ſtranger ſhall reſcue the priſoner, whereby he eſcapeth, this is miſpriſion of treaſon in them both, for that the arreſt by the Iuſtice was (in law) the arreſt of the King himſelfe. Ibid.

Note, that every treaſon, or felony, do include miſpriſion, ſo that where any perſon hath committed treaſon or felony, the King may cauſe the offender to be indited and arraigned but of miſpriſion. Stamf. 39. Cromp. 41.

Miſpriſion is properly, when one knoweth that another hath committed, or is about for to commit any treaſon, or felony, but was not, or is not conſenting thereto, and will not diſcover the offender to the King, or his Councell, or to ſome Magiſtrate, but conceales the offence. *Stamf.* 37. *Stat* 5. *E.* 6 *c.* 11. Stamf. 39.

For miſpriſion of treaſon, the offender ſhall forfeit to the King his goods and chattels for euer, and the profits of his lands during his life, and alſo ſhall be impriſoned during his life. *Br. Treaſ.* 19. *& Stamf.* 38. 3. H. 7. 1. in.

The forfeiture. For miſpriſion of felony the offendor ſhall bee onely fined (and ranſomed) by the Iuſtices before whom he ſhall be attainted, and ſhall be committed to priſon until he hath payed his fine. See *Br. Treaſ.* 25. *& Finch lib.* 2. *fol.*

For high treaſon, the offendor being a man, ſhall be drawne upon a hurdle unto the place of execution, and there ſhall be hanged by the necke, cut downe alive, and his entrails and priuie members ſhall be cut from his body, and bee burned within his view; and then his head ſhall bee cut off, and his bodie quartered, and then to bee diſpoſed of at the Kings will.

Alſo he ſhall forfeit all his lands and goods to the King: yea at this day (by the ſtat. made 26. *H.* 8. *cap.* 13. *&* 5. *Ed.* 6. *cap.* 11.) his lands entailed ſhall be forfeited; and his wife ſhall loſe her dower (ſaving in certaine caſes, *Vide Stamf.* 182. *&* 187. *Ca.* 1. 10. 3. 10. *&* 7. 33. 34. *& Dyer* 289. *&* 332. *Plo.* 237. *b.* 249. *b.* 554. *b. &* 559. Vide Co. 1. 3. 31. & 33.

But the judgement and ſentence of condemnation upon a woman in caſe of treaſon, is that ſhe ſhall be drawne upon an hurdle unto the place of execution, and there burned. *Stamf.* 182. *c.*

In caſe of *Præmunire*, the offendor (being attainted upon the ſtatute of 16. *Rich.* 2.) ſhall forfeit all his lands which hee hath in fee, for ever, and all his goods and chattels to the King; but his lands whereof hee hath an eſtate taile, hee ſhall forfeit onely during his life, and ſhall be impriſoned P. Prær. 15. Br. Præm. 6. 19. Co. 7. Pref. & 1. 163. Co. 8. 130.

ned during his life. But ſome do hold, that if the offender be attainted upon the ſtatute of 27. *Ed.* 3. *cap.* 1. there the offender ſhall forfeit nothing if he appeare at the day of the *Præmunire* returned. See that ſtat. *& Br. Præm.* 6. *& Cromp. Autor. ders cots.* 97. Yet others do hold that as upon the ſtatute of 16. *R.* 2. *cap.* 5. the offenders ſhall forfeit their lands and goods if they be attainted (*Br. Præmun* 6. *&* 20) ſo upon the ſtat. of 27. *E.* 3. if the offender do appeare and plead, and be found guilty, he ſhall have the judgement of *Præmunire, ſc.* to bee put out of the Kings protection, and ſhall forfeit his lands, goods, and chatels to the King, and his body ſhall be impriſoned during his life, (or untill he hath made fine and ranſome at the Kings will.) See the ſtat. & *Co* 11. 34. & the old *Natur. Bre. fol.* 159 *Co. L.* 130 *&* 391.

9 H. 4. 7. Br. Treaſ. 5. Fitz. Iuſt. de peace 7.

Now for the offenders in high treaſon, miſpriſion of treaſon, and *Præmunire*, although the Iuſtices of peace (by their commiſſion, nor by ſtat.) cannot meddle with them in the very point of their offences, ſaving in ſome particulars, and that by way of inquiry only, which you may ſee *hic antea tit. Felony cap.* 20 Yet for that all treaſons and ſuch other offences are againſt the peace of the King and of the Realme, therefore upon complaint made to the Iuſtice of peace, or other knowledge had by him of any ſuch offenders, it ſhall be his part to cauſe ſuch offenders to bee apprehended, and to joyne with ſome other Iuſtice of peace in taking their examination, and the information upon oath of ſuch as bring them, or of others that can prove any thing materiall againſt them, and to put the ſame in writing (under the hand of the informers) and then to commit the offenders to the goale; and alſo to bind over by Recogniſance all ſuch as do declare any thing materiall, to appeare and give evidence againſt ſuch offenders, before the Lords of the Kings Majeſties Privy Councell, or in the Kings Bench, or at the Aſſiſes and Goale delivery, or elſewhere, when they ſhall be called, upon reaſonable warning, and after to certifie their doings therein to ſome of the Lords of his Maieſties ſaid Councell.

26 H. c 13.

Note, that all treaſons, miſpriſion of treaſon, and concealement of treaſon, done or committed out of the Realme, ſhall be enquired of, and tried within the Realme, *ſc.* in the Kings Bench, or elſe before ſpeciall Commiſſioners, ſee the ſtat. 35. *H.* 8. *cap.* 2. *&* 5 *E.* 6 *cap.* 11. *P. Treaſ.* 18. *& Dyer* 287. 298. 132. 360 *Co.* 7. 23. *&* 11. 63.

Petty Treaſon. CHAP. 91.

25. E. 3. ca. 2. P. Treaſ 3.

PEtty Treaſon is when wilfull murder is committed (in the eſtate œconomicall) upon any ſubiect, by one that is in ſubiection, and oweth faith, duty, and private obedience to the party murdered, as in theſe caſes following.

Servants.

Ibid. & 10. H. 30. If a ſervant maliciouſly killeth his or her maſter or miſtreſſe, this was petty treaſon by the Common Law, *Stamf.* 10. i. *Br.* 8. 12. *& Co.* 11. 34. *&* 25. *E.* 3. *cap.* 2.

Ibid. Fit. Co. 118. A ſervant of the age of thirteen yeeres, killed her miſtreſſe, it was adjudged in her petty treaſon. *Br. Treaſ.* 12.

Stamf. 10. A ſervant that is departed out of ſervice, and a yeere after killeth his maſter upon malice conceived when hee was in his ſaid ſervice, it is petty treaſon. *Br. Treaſ.* 1. 5. 33. *Aſſ. p.* 7 *Co.* 1. 99. *b.*

Cromp. 19. 30. a. A ſervant doth procure another to kill his maſter, who killeth him in the ſervants preſence; this is petty treaſon in the ſervant, and murder in

the other. See *Plo.* 100. *a. & Br. Coro.* 119. *& quære.*

But if the eſtranger doth kill the maſter in the ſervants abſence, then the ſervant is only acceſſary to the murder, but it is no petty treaſon in him. Dyer 128.

A ſervant conſpireth with a ſtranger to rob his maſter, and at the time appointed in the night, he letteth in the ſtranger into the houſe, and leads him to his maſters chamber, and the ſtranger killeth his maſter, the ſervant ſtanding by, but ſaying nothing, this is petty treaſon in the ſervant, and murder in the ſtranger: yet by ſome this is but murder in the ſervant, *ibid. & 40 Aſſ. Br. Cor.* 119. For where the principall is but a felon, the acceſſary cannot be a traytor. See *Plo.* 100. *a.* that the ſervant is a principall in this caſe, *& poſtea tit. Acceſſary.* Dyer 128.

A ſervant commands one to beat his maſter, and he killeth him, this is petty treaſon in the ſervant, if he be preſent. Cromp. 22.

A ſervant upon malice pretended, ſhooteth at an eſtranger, and miſſeth him, and killeth his maſter, being by; this is petty treaſon in the ſervant, (though he intended no hurt to his maſter, yet) becauſe he intended murder thereby. Cromp. 22.

The wife. The wife malicioufly killeth her husband, this is petty treaſon. 25. *Ed.* 3. *cap.* 2. Br. Trea. 38

The husband malicioufly killeth his wife, this is but murder.

The reaſon of this difference is, for that the one is in ſubiection, and oweth obedience, and not the other.

The wife and a ſervant do conſpire to kill the husband, and the ſervant killeth him in the wives abſence: this is petty treaſon in them both. Dyer 331.

The wife and a ſtranger do conſpire to kill her husband, and hee killeth her husband in the wives abſence; this is no petty treaſon in the wife, but murder in the ſtranger, and ſhe ſhall be hanged as acceſſary to murder. Dyer ibid.

Alſo where the wife or ſervant procuring, conſpiring, or practiſing ſuch murder, at the time of ſuch murder is in the ſame houſe, though they be not preſent thereat, but are in another roome, yet it is petty treaſon in them, as it ſeemeth by two caſes reported by M. *Crompton* in 4 *&* 5 *Mar.* Cromp. 22.

The wife poyſoneth a thing, to the intent to poyſon her husband therewith, the husband eateth of it, and becommeth very ſick thereof, but recovereth, after an eſtranger eateth thereof, and dieth thereof, this is only murder in the wife. Plo. 474 Co 9 81. See more in the title of Murder.

The wife poyſoneth an apple, to the intent to poyſon a ſtranger therewith, and layeth it to that purpoſe in a ſecret place, and the husband by chance eateth of it, and dieth thereof within a yeere and a day, this is petty treaſon in the wife, for that ſhe intended murder thereby. Cromp. 30.

The wife poyſoneth an apple, or other thing, and delivereth it to *B.* (knowing nothing of the poyſon) to give to *C.* and *B.* giveth it to the husband, (without the aſſent of the wife) who eateth thereof in the wifes abſence, and he dieth thereof, this is petty treaſon in the wife. Cromp. 2.

And yet if *A.* lay impoyſoned fruit for a ſtranger being his enemy, and his father or mother come and eat it, Sir *Fr. Bacon* maketh a *quære* whether this be petty treaſon, becauſe it is not altogether *Crimen paris gradus.* But ſaith he, *in criminalibus ſufficit generalis malitia intentionis cum facto paris gradus. Rovula* 15. *pag.* 65, 66.

The child malicioufly killeth the father or mother, this is petty treaſon

ſon (although the father or mother at the ſame time gave neither meat, drinke, nor wages to ſuch childe:) But it is treaſon in the childe in reſpect of the duty of nature violated. *Vide Ba.* 53. *The childe.*

21.E.3.17. Ca.7.13.b. Br.Treaſ.6.

A Baſtard killeth his mother, this ſeemeth petty treaſon, for the mother is certainely knowne.

Cromp.21.

The ſon or daughter in law, killeth the father or mother in law, with whom they dwell and doe ſervice, and have meat and drinke, it is petty treaſon, although ſuch childe take no wages; but the Indictment ſhall be by the name of ſervant.

Diliſons Rep. 2.M.1.

A Clerk, or any eccleſiaſticall perſon maliciouſly kils his Ordinary, or ſuperiour, to whom he oweth obedience, this is petty treaſon. *19 H. 6.47.* *A clerke.*

25.E.3.ca.2. Br.Treaſ.7.

Note, that unto the Biſhop of every Dioceſſe, the Clerkes within their Dioceſſe doe owe faith and obedience, which is called Canonicall obedience. *Finch* 137.

Note further, that whatſoever act will prove murther betweene ſtrangers, the ſame will make petty treaſon from the ſervant to his maſter, from the wife to her husband, from the childe to the father or mother, and from the Clerke to his Prelate or Ordinary, *Mutatis mutandis.*

Otherwiſe it is betweene theſe perſons, where it is not wilfull murther: as if the ſervant ſhall kill his Maſter upon a ſudden falling out, without any malice precedent, or by miſadventure, or *ſe defendendo*, theſe are not petty Treaſon, neither ſhall the Indictment be Proditorie, &c. And ſo of the wife or childe.

Stanf. 11.

Breaking of priſon, whereby priſoners that were there in for treaſon doe eſcape, this is alſo petty treaſon. 1 *H.* 6.5. *Br.* 11. *Breake priſon.*

A Norman being Captaine of an Engliſh ſhip, wherein alſo were certain Engliſhmen, and they robbed upon the ſea, this was adjudged felonie in the Norman, and treaſon in the Engliſhmen, and they were drawne and hanged. 40. *Aſſ. p.* 25. *Br. Coron.* 119. *& Treaſon* 16. *Pirat.*

But at this day all felonies, robberies, murders, and pyracies, done upon the high ſea, are to be tried before the Lord Admirall in the Court of the Admiralty, and according to the civill Law. Or they may be attainted before Commiſſioners by force of the ſtat. of 28. *H.* 8. 15. and then they ſhall forfeit their lands, and their bloud ſhall be corrupted. *Col. L.* 391. See *hic cap* 92.

Alſo it hath beene adjudged pettie treaſon in ſome books, and felony in ſome other, for an Indictor (in caſe of treaſon or felony) to diſcover the Kings Counſell and their fellows, (*ſc.* to diſcover to others what perſon they haue indicted, or if they have indicted any, then to ſhew to others what they have done therein, and by whoſe meanes, &c.) But now that offence is taken onely to be finable to the king. *Indictor.*

Stanf.1.36. Fitz. Cor. 207.272. Br.Cor.113.

The puniſhment of pettie treaſon is this: the man ſo offending ſhall be drawne and hanged: the woman ſhall be burned aliue, in caſe as well for pettie treaſon, as of high treaſon, 1. *R.* 3.4. But in caſe of felonies, the iudgement both of man and woman is to be hanged. *Puniſhment*

1.R.3.4. Br.Treaſ.8. c.12.15.& 30 Plo.86.

Alſo no perſon or perſons (bee they lay, or within holy orders, &c.) which ſhall be attainted or found guilty of any manner of pettie treaſon, nor any acceſſary thereto before the fact, ſhall bee admitted to haue the benefit of his or their Clergy. See the ſtat. 12. *H.* 7. *c.* 7. 23. *H.* 8. *c.* 1. 28. *H.* 8

28. *H.* 8. *cap.* 1. 32. *H.* 8. *cap.* 3. 1. *E.* 6. *cap.* 12. *& 4. & 5. Ph. & Ma. cap.* 4.

Forfeiture. The forfeiture for petty treaſon, is, the King ſhall have his goods, and for his lands the King ſhall have *annum, diem, & vaſtum*, and the Eſcheat thereof ſhall be to every Lord, of his owne proper fee. 25 *Ed.* 3. *cap.* 2. But for petty treaſon or felony, if the offendor hath but an eſtate taile in his land, he ſhall forfeit them but onely during his life, *Stamf.* 186. 187. And for petty treaſon, if the husband be attainted, the wife ſhall be barred of her Dower. *Co. L.* 37.

The Iuſtices of peace may enquire of petty treaſon, as of felony: and out of their Seſſions, every Iuſtice of Peace may deale with the offendors therein, as in caſe of felony, by examination of the offendors, by taking information againſt them, and binding over the informers to the generall Gaole delivery, and by committing the offendors to the Gaole.

Of Felonies by the Common Law. CHAP. 92.

FElony, by ſome this word is derived, *quaſi felleo animo factum L. et* 4. 124. *Ideo dicta eſt fellonia, quia fieri debet felleo animo*, (with a mind as bitter as gall.) *Minſh. verbo* felon, ſaith it commeth of the French word *felon, id eſt atrox, crudelis: vel a velando, cum celari et occultari ſemper velit.*

By the Law at this day, under the word *Felony*, is included petty treaſon, murder, homicide, chancemedley, *Se defendendo*, burglary, robbery, theft, rape, burning of houſes, petty larceny, reſcous, and eſcape, &c. *Co. L.* 391.

Homicide. Homicide moſt properly is, *hominis occaſio ab homine facta*; for if a man be killed by a beaſt (as a horſe, or a dog) or by any other thing or miſchance, although that be *hominis cædium*, (of which two words Homicide is derived) yet in ſuch caſes it is not aptly nor uſually ſaid that homicide is committed, but onely a man is ſaid to be ſlaine.

Others do thus define or deſcribe it; Homicide is the felonious killing of one man by another within the Realme, and living under the kings protection. Lamb. 339

But to kill a man beyond the ſeas, or to ſtrike and give one a mortall wound beyond the ſeas, or upon the ſea, whereupon hee dyeth upon the land (within this Realme) theſe homicides are not puniſhable as felonie by the Common Law; for that they cannot be enquired of, nor tryed here: for in criminall caſes, the rule is, *Vbi quis delinquit, ibi punietur*: So *Co.* 2. 93. *b.* 47. But in treaſon it is otherwiſe: See hereof *paulo antea, cap.* 19. *et* 91.

And yet all appeales to be made of things done out of the Realme, ſhall be tryed before the Conſtable & Marſhall of England by the ſtatute, 1 *H.* 4. *ca.* 14. So that if any of the Kings ſubiects ſhall bee killed, by another of the kings ſubiects in Scotland, or in any forreine Realme, the wife or heire of him which is ſo ſlaine may have an appeale thereof in England before the Conſtable and Marſhall, &c. *Stamf* 65. *b. F. Co. L.* 74.

Alſo to kill a man upon the ſea, although it bee not tryable by the common Law, yet it is felony, and is enquirable and tryable in the Admirall Court; for thoſe of the Admiralty have juriſdiction where both the ſtroke and dying is upon the ſea; otherwiſe not. And therefore in 25. *Eliz.* it was adjudged in one *Lacyes* caſe, that where the ſayd *Lacy* had ſtrucken *Peacocke*, and given him a mortall wound upon the ſea, whereof *Peacocke* dyed at Scarborough (in Yorkeſhire) the ſaid *Lacy* was diſ- Hic cap. 91.

charged

charged thereof, for that thoſe of the county of Yorke could not enquire of the death without enquiry of the ſtroke, and the ſtroke they could not enquire, for that it was not given within any county. See *Co.* 2. 93. *et* 5. 106. 107. *et Stat.* 15. *R.* 2. *ca.* 3. *et* 2. *H.* 5 *cap.* 6. But yet by the ſtatutes made *Anno* 27. *H* 8. *c.* 4. *et* 28. *Hen* 8. *cap.* 5. all offences of Pyracy, robbery, murther, or other felony done or committed upon the ſea (or in any other Haven, River, or Creeke where the Admirall pretends to have juriſdiction) ſhall bee enquired of, heard, tryed, and determined in ſuch ſhires and places within the realme, and before ſuch perſons as ſhall be limited and appointed by the Kings Commiſſion; and after the common courſe of the lawes of the land, uſed for felonies committed within the Realme, and ſuch as ſhall be ſo convict of any ſuch offence, ſhall have and ſuffer ſuch paines of death, and forfeiture of lands and goods, as if they were convict of murther or felony done upon the land.

Lamb. 233. But whether he that is ſlaine, be an Alien, or a Denizen, an Engliſhman or ſtranger, it maketh no difference (if he live under the Kings protection.)

Co. 7. 13. 14. Cromp. 24. To kill a man that is attainted (by verdict, or by outlawry, or otherwiſe) of any murder, felony, or treaſon, is felony: for none may kill or put to death any of theſe, but the officer of Iuſtice, and by lawfull warrant. See *Doct. & Student f.* 133. *Co. L.* 128 *b.*

Alſo to kill a man attainted upon a *Præmunire*, is felony at this day. See the ſtatute 5 *El. c.* 1. *& Co.* 7. 14. *Co. L.* 130.

Co. 7. 14. Alſo to kill a man that hath abjured the Realme, is felony: See *Co.* 7. 9. *b.* and the *Doct. & Student f.* 133.

For note, that the Kings protection belongeth by the law of Nature to all theſe, and the King may protect and pardon them all.

Homicide is threefold:
- *Voluntate: et eſt duplex.*
  - Murder,
  - Man ſlaughter, or Chancemedley:
- *Caſu*, or Miſadventure: this alſo is conſiderable after two ſorts, *ſc.* whether it happen in doing a thing
  - Lawfull,
  - or
  - Vnlawfull.
- *Neceſſitate*: this is ſometimes
  - Commanded, *ſc.* in execution of Iuſtice.
  - tolerated
    - for advancement of Iuſtice.
    - *Se defendendo.*
  - Prohibited. See *poſt tit. Homicide, c.* 98.

Felo de ſe.

BVt firſt to write ſomething of *Felo de ſe.*

For the hainouſneſſe thereof, it is to be obſerved, that it is an offence againſt God, againſt the King, and againſt Nature; alſo it is within the degree of, or of the quality of murder, *ſc.* pretended and reſolved of (in his minde) to be done, before it be done, yea it is holden to bee a greater offence, than to kill another man, *Plo.* 261.

And yet the civill Law maketh a difference of ſuch offendors, and of their puniſhment, according to the quality of their mindes, whereby they were moved to kill themſelves; for if they kill themſelves through griefe or impatience of ſome infirmity, no puniſhment followeth ſuch their fact (by the civill Law) but they are left to the Tribunall of the Almighty Iudge

Judge of the quicke and the dead; but if they kill themſelves upon any other cauſe, their goods are confiſcated, and their dead bodies (for the terror of others) are drawne out of the houſe, &c. with ropes, by a horſe, to a place appointed for puniſhment, or ſhame, where the dead body is hanged upon a Gibbet; And none may take downe the body, but by the authority of the Magiſtrate, &c. *Vide Fulbecke* 90.

But by the Common Law, if a man kill himſelfe (either with a meditate hatred againſt his own life, or out of diſtraction, or other humor) hee is called *Felo de ſe*; & he ſhal forfeit to the King all his goods & chattels reall and perſonall, and his debts due to him by ſpecialty (but no debts due to him without ſpecialty or upon ſimple contract. *Dyer* 262. 16. *E.* 4. 7.) Dyer 262. Plo. 261.

And their goods are uſually granted and allowed by the King, to the Biſhop Almner, and in ſuch ſort as *Deodans* are. *Ba.* 3. *V.*

But he ſhall not forfeit his lands, neither ſhall his bloud bee corrupt. See *Fitz. Coron.* 362. *et* 426. Fi. Cor 301. Plo. 261.

If a man doe give himſelfe a deadly wound, and dyeth thereof within a yeare and a day after, all his goods, &c. which hee had at the time of the blow given, or at any time after, ſhall be forfeited to the King. *Plo.* 262. *ab.* Plo. 262.

Yet the goods of *Felo de ſe*, be not forfeited till his death bee preſented and found of Record: neither can theſe goods be claimed by preſcription (by Lords of Liberties, &c.) but by the kings grant. Co. 5. 110. 21. H. 7. 13.

And although he cannot be attainted of his owne death, for that hee is dead before that there is any time to attaint him, yet the finding of his death by the Coroner (or other perſon thereto authorized) is by law equivalent to an attainder in deed, as to his goods. *Plo.* 258. *b.*

If *A.* doe ſtrike *B.* to the ground, and then draweth his knife to kill *B.* and *B.* lying upon the ground draweth his knife to defend himſelfe, and *A.* is ſo haſty to kill *B.* that he falleth upon *B.* his knife, and ſo *A.* is ſlaine, here *A.* in a manner is *Felo de ſe*: and yet ſhall not *A.* forfeit his goods in this caſe. *Br. Cor.* 12. See 44. *Aſſ. p.* 17. *Br. Cor.* 12. *&* 14. that *A.* was after adjudged not to be *Felo de ſe* in this caſe. 44 E. 3. 44. Fit. Cor. 5.

If *A.* of malice propenced diſchargeth a Piſtoll at *B.* and miſſeth him, and throwes down his Piſtoll and flyeth, and *B.* purſueth him to kill him, whereupon *A.* turning falleth downe, his dagger drawne, and *B.* through haſte falleth upon the dagger, here *B.* is *Felo de ſe*, and *A.* ſhall goe quit. 44 *E.* 3. Sir *Fr. Bacon* 4. 5.

If a Caliver be diſcharged with a murtherous intent at *I. S.* and the piece breakes, and ſtrike into the eye of him that diſchargeth it, & killeth him, hee is *Felo de ſe*; and yet his intention was not to hurt himſelfe: for *felonia de ſe*, and murther, are *Crimina paris gradus*. See *Ibid. pag.* 65.

If one that wanteth diſcretion, killeth himſelfe (as an infant, or a man *Non compos mentis*) he ſhall not forfeit his goods, &c. Stamf. 19.

If a lunaticke perſon killeth himſelfe, hee ſhall forfeit his goods (*Fitz. Coron.* 324.) but this muſt be underſtood when hee killeth himſelfe out of his lunacy: otherwiſe it is if hee kils himſelfe during his lunacy, for then hee ſhall neither forfeit his goods, nor be counted *Felo de ſe*.

If one being of *Non ſane memorie*, or a lunaticke, giveth himſelfe a mortall wound, and after hee becommeth of ſound memory, and then dyeth of the ſame wound, in this caſe although hee dyeth, by reaſon of his owne Co. 4. 123.

proper

proper ſtroke, yet for that the originall cauſe was committed when he was *de non ſane memorie*, he ſhall not be accounted *Felo de ſe*, neither ſhall he forfeit any thing, for that the death hath relation to the originall act, the which was the ſtroke or wound, given when he was *de non ſane memorie*. *Co.1.99 b.& 4.42.a. Fitz.Coron.244.Pl.260.*

Co.5.110. The inquiry of ſuch felony belongeth to the Coroner: And yet if *Felo de ſe* be caſt into the ſea, or ſo ſecretly buried, that the Coroner cannot have the ſight of his body, and ſo cannot inquire thereof; then the Iuſtices of peace, or any other having authority to inquire of felonies, may inquire thereof (for that is felony:) and a Preſentment thereof found before them, intituleth the King in his goods.

Murder. CHAP. 93.

OF old time every killing of one man by another, was called Murder, (of the effect) becauſe death enſued of it. Afterward Murder was reſtrained to a ſecret killing only; and therefore *Bracton* and *Britton* in their definition of Murder, calleth it *Occulta neciſio nullo præſente, &c.* But ſince murder hath been and is taken in a middle degree, neither ſo largely as it firſt was, nor ſo narrowly as M. *Bracton* and *Britton* ſpeaketh of it. For

Stanf.18. Plow.561. murder is now conſtrued to be when one man upon malice pretended, prepenced, (*ſc.* forethought) or precedent, and with his will, doth kill another feloniouſly, *viz.* with a premeditate and malicious minde, whether it be openly or privily done, this is felony of death, without any benefit of Clergy. 23.*H.* 8.*cap.* 1. *&* 1. *Ed.* 6.*cap.*12. See *Exod.*21.14. he ſhall be taken from the Altar and put to death.

This malice pretended or precedent, may be either apparent, (as where there was a precedent falling out, or where there is a lying in wait, or a time and place appointed, &c.) or it may be leſſe apparent or manifeſt, and yet ſhall be implied, preſumed, and taken to be out of malice precedent, by the manner and circumſtances thereof.

Co.3.67. As where one killeth another without any provocation, the Law impliceth and adjudgeth it to have proceeded of malice prepenced: Therefore if one ſuddenly, and without any ſhew of quarrell, or offence offered, ſhall draw his weapon, and therewith kill another.

Co.3.57. Or if one ſhall be reading of ſome book, or otherwiſe buſied, ſo as he ſaw not the party that ſhall ſtab or ſtrike him (and he dieth thereof;) or ſhall be going over a ſtile, &c. and another ſhall kill him; ſuch offenders ſhall ſuffer death as in caſe of wilfull murder.

Elm.cap.8. And accordingly hath the ſtatute 1. *Iac.* well provided, that if one ſhall ſtab, ſtrike, or thruſt another, that hath not then a weapon drawn, or hath not then firſt ſtricken the other, and if the party ſo ſtabbed, ſtricken, or thruſt, &c. ſhall die thereof within ſix months after, although it cannot be proved that the ſame was done of malice forethought, yet the offender being thereof lawfully convicted, ſhall ſuffer death as a wilfull murderer, without benefit of Clergy.

Co.4.40. 8.9.46.58. To kill the Sheriſe or any of his officers, in their execution of the Kings proceſſe, or in doing their office, is murder in him that killeth the officer.

Co.9.69. But if he be not an officer known, hee muſt ſhew his Warrant before he arreſt the party, or upon the arreſt, (if the other ſhall demand to ſee it) or elſe it ſeemeth the arreſt is tortious; And where the arreſt is tortious (be it

by

by an officer known, or by another) there the killing of him that maketh such an unlawfull arreſt, is no murder, but manſlaughter only, as it ſeemeth. Co. 9. 65.
Againe, where an officer hath the Kings writ, or other lawfull warrant, though it be erroneous, yet in the executing thereof if he be ſlain, this is murder. *Co.* 9 68. Co. 9. 68.

For the officer is not to diſpute of the validity of his Warrant, or the authority of the Court (or of the Iuſtice of peace) that ſent the Warrant; but his office is to execute the Writ or Warrant.

To kill any Magiſtrate, or miniſter of Iuſtice in the execution of their office, or in keeping the peace (according to the duty of their office) is murder in ſuch offenders, for their contempt and diſobedience to the King and the Law; and the Law implieth it to be of malice prepenced. And therefore if the Sherife, Iuſtice of peace, high Conſtable, petty Conſtable, Watchmen, or any other miniſter of the King, or any that come in their aid be killed in doing their office, this is murder. Co 4 40. & 9. 68. 22 Eliz. Crompt.

If the Sherife, or Iuſtice of peace come to ſuppreſſe Rioters, and one of the Sherifes or Iuſtices company is ſlain by one of the Rioters, this is murder in all the Rioters that be there preſent.

A Conſtable with others to ayd him, do come to part an affray, if the Conſtable or any of his company ſhall be ſlain in doing this his office, it is murder in him that killed him, although the affray were on the ſudden, & though it were in the night: for when the Conſtable commands them in the Kings name to keep the peace, although they cannot know him to be a Conſtable, yet at their perill they ought to obey him upon ſuch commandement. Co. 4 40. Co. 9. 68.

And in theſe caſes the killing of ſuch an officer, or of any of their company, is in Law intended to be by malice pretended; *ſc.* that the murderer had a malicious reſolution in him, to oppoſe himſelfe againſt the Law, the officers thereof, and the Iuſtices of the Realme. Co. 9. 68.

Alſo if a thiefe that offereth to rob a true man, killeth the true man in reſiſting him, it is murder of malice pretended. *Plow.* 474. *Co.* 9. 67. Plo 474

A man carried his father (being ſick; and againſt his will) in a frofty and cold time, from one towne to another, and the father died thereof; this was adjudged murder in the ſonne. 2. E. 312.

A Harlot delivered of a child, hid it in an orchard (it being alive) and covered it with leaves, and a Kite ſtruck at it, and the child died thereof, and the mother was arraigned and executed for murder. 2. Eliz. Crompt.

A man hath a beaſt that is accuſtomed to do hurt, and the owner knowing thereof, doth not tie him, or otherwiſe keep him faſt ſhut up, but ſuffereth him to go at liberty, and after the beaſt killeth a man, this is felony in the owner of the beaſt, for by ſuch ſufferance the owner ſeemeth to have a will to kill. Pit. Co. 331 Stamf. 17. Brook. 218

So if a man hath a horſe of that property, that he will ſtrike ſuch as come neere him, and his maſter knowing this, rideth upon the ſame horſe amongſt a multitude of people, &c. and the horſe killeth a man, this is felony in the maſter. *Lect. M. Cooke.*

And in theſe foure laſt caſes, *voluntas reputabitur pro facto*, death enſuing thereupon: For it may plainly appeare, that they had a will and meaning of that harm which followed, which will in them doth amount to malice, and ſo makes their offences to be murder, and in ſuch caſes where death enſueth

ſueth *Nihil intereſt utrum quis occidat an cauſam mortis præbeat.*

If a man perſwades another to kill himſelfe, and be preſent when he doth it, he is a murderer. *Ba.* 65.

The book called *Speculum Juſticiar.* ſpeaking of *Homicide voluntate*, ſaith, it may be either by ſtriking, impriſonment, famine, or other paine.

1 By ſtriking, or ſtabbing, &c. as you may ſee by that already ſaid.

2 By impriſonment; as if a man by impriſonment ſhall detaine the body of another (under colour of law, or right) unto death, or ſo as hee dieth thereby. See *hic cap.* 107. *verbo Goaler.*

3 By famine; as if a man ſhall caſt, or leave an infant, or other perſon which cannot go, in a deſart or ſuch other place, where no perſon uſually reſorts, by reaſon whereof ſuch infant, or other impotent perſon, dieth for want of ſuccour, &c.

4 By paine; as if a man by torture (or *Dures*) cauſeth another to accuſe himſelfe mortally, where in truth he did not the thing, but to be rid of the paine (rather deſiring death) hee confeſſeth himſelfe guilty of the felony, when he is not guilty.

F. Cor. 163. Stanf. 16. If a man dieth in the hand of a Phyſitian or Surgean authorized to practiſe, this is no felony in the Phyſitian or Surgean. And if a Phyſitian bearing malice to one who is under his cure, ſhall give him a medicine contrary to his diſeaſe, whereof the patient dieth, this is felony in the Phyſitian. *Lect. Mr. Cooke.*

If a Surgean authorized, do through negligence in his cure cauſe the party to die, the Surgean ſhall not be brought in queſtion of his life; and yet if he do only hurt the wound whereby the cure is caſt back, and death enſues not, he is ſubiect to an action upon the caſe for his miſdemeſance. Sir *Fr. Ba.* 37.

34. H. 8. 33. Lamb. 236. And if one which is no Phyſitian, or Surgean (or which is not allowed to uſe or practiſe ſuch faculty, will take a cure upon him, and his patient dieth under his hand; this hath been holden to be felony: but *quære* of this laſt caſe, for it cannot be diſcerned whether the patients death commeth by any wilfull default, in the party taking ſuch cure upon him, or by the patients infirmity: againe, there appeareth in them no will to do harme, but rather to do good, and then the ſtatute of 34. *H.* 8. 8. leaveth ſo great a liberty of ſuch practice to unskilfull perſons, that it will be hard now to make it felony. But if a Smith or other perſon (having skill only in dreſſing or curing the diſeaſes of Horſes, or other cattell) ſhall take upon him the curing, or letting blood, or ſuch like cure of a man, who dieth thereof, this ſeemeth to be felony; for the rule is, *Quod quiſque norit, in hoc ſe exerceat.*

34. H. 8. Surg. 2.

Crump. 23. Two playing at Tables, fall out in their game, & the one killeth the other with a dagger ſuddenly, this was holden murder, in one *Emery's* caſe, before *Bromley* at the Aſſiſes in Cheſhire about 27. *El.* as M. *Crompton* reporteth.

Crump 25. The husband, upon words between him and his wife, ſuddenly ſtruck his wife with a peſtell, whereon ſhe died, and it was adjudged murder at the Aſſiſes at Stafford before *Walmeſley.* 43. *Eliz.*

Quære the reaſon why it ſhould be murder in theſe two laſt caſes, conſidering there appeareth no precedent malice, and that it was done upon the ſudden, and upon provocation.

Lamb. 247. *A.* hath wounded *B.* in fight, and after they meet ſuddenly and fight again, and *B.* killeth *A.* this ſeemeth murder, and malice ſhall be intended in *B.* upon

on the former hurt: but now if *A.* had killed *B.* this seemeth but manslaughter in *A.* for his former malice shall be thought to be appeased by the hurt he first did to *B.*

Two were in suit, and they meet suddenly, and quarrel about the suit, and the Defendant killeth the Plaintife; this seemeth murder, *Tamen quare.*

If *A.* of malice prepenced discharge a pistol at *B.* & misseth him, & throws downe his pistoll and flies, and *B.* pursueth him to kill him, whereupon *A.* turneth and killeth *B.* with a dagger; if the law should consider the last impulsive cause, it should say that it was in his owne defence: But the Law is otherwise, for it is but a pursuance and execution of the first murtherous intent: and the first motive will be principally regarded, and not the last impulsion. Otherwise if there had beene a full interruption. Sir *Fr. Bacon.* 4.

Poysoning. Also wilfull killing of another by poyson, was, and is murder by the Common Law. See *Stamf.* 21. & *Br. Indictment* 41.

And the offendors therein, their aiders, abbettors, procurors, & counsellors shall suffer death, and forfeit in every behalfe, as in other cases of wilfull murder of malice prepenced. 1. *E.* 6. *cap.* 12. *Speculum Justic.* describeth these offendors thus, *Qui donne al autre a manger, ou autrement, chose envenom.*

The husband gave a poisoned apple to his wife, to the intent to kill her, and she not knowing of it to be poisoned, gave it to her child, who died thereof, this is murder in the husband, and yet he loved that childe dearly: and so had it been if a stranger of his owne accord had after eaten thereof, and died thereof: for the putting of poyson into the apple, &c. upon an evill and felonious intent, maketh it murder, whosoever be killed thereby. Plo. 474. Co. 9. 81.

A. bringeth drink that was poysoned (knowing of it) to *B.* and advised *B* to drink of it, telling him it would do him much good; by reason of which perswasion, *B.* drunk of it (in the absence of *A.*) and died thereof; this was adjudged murder in *A.* although he were not present at the time of the taking of the poyson. Co. 44.

If one giveth corrupt victuall to another, to the intent to poyson him, and he dieth thereof within the yeere and day, this is murder. Cromp. 31.

One layeth corruption at another mans doore, to the intent to poison him with the savour thereof, and the other party taketh infection by the savour thereof, and dieth; this is felony. *Lect. M. Cocke.*

So if one giveth to another Spunge comfets, or other such thing, in sport, & not in malice, & he that so taketh them, dieth thereof, this is felony. *Ibid.*

But if a man shall prepare Rats-bane, &c. to kill Rats, &c. and shall lay this in certaine places to that purpose, without any evill intent, (*sc.* without any intent to kill any reasonable creature) and another man findes and eats this, and dieth thereof, yet this is no felony. *Plo.* 474. Co. 9. 81.

The master upon malice precedent, goeth to kill another, and taketh his servants with him, (but they knowing nothing of their masters intent) and the master and his servants do meet the other, and the master doth assault him, and the servants taking their masters part, do also assault and kill him, this is murder in the master, and but manslaughter in the servants. Plo. 100.

Rules in murder. 1 Note, that when a man hath malice to one, & intending & indeavouring to kill him, he killeth another man, this is murder whomsoever he killeth. *vi. Plo.* 101. *Dyer* 128. *Fitz. Cor.* 262. *Stamf.* 16. For his intent was to do murder. Plo. 474.

Nay, if two fight upon malice pretended, and in their fight a stranger (that would part them) commeth between them, and is killed, this is murder Lamb. 338. F. Coro. 260. Dyer 128.

in

in them both, if it may not be proved which of them did kill him.

Plo.474 A man upon malice, ſhooteth at one, or lieth in wait to kill one, and killeth another unwittingly, in both theſe caſes it is murder.

2 Note alſo, that in all caſes where a man commeth or goeth about to do any thing unlawfull, as to kill, beat, or diſſeiſe another, or to doe any other treſpaſſe, and in doing this, hee killeth any man, this is murder. See *Cromp.* 24. *b.*

Cromp.24. Lamb.337. One ſtealing Peares in another mans Orchard, and the owner came and rebuked him, and the other killed him, this was adiudged murder, 4. *Maria.*

Plo.435. 3.Co.314. Alſo where a man commandeth another to beat *A.* and he beateth him, ſo as *A.* dieth thereof, this is murder in him that gave the commandement to beat him, for that he commanded him to do an unlawfull act, by reaſon whereof the killing of a man enſued.

For (as that late reverend and learned Iudge Sir *Iohn Dodderidge pag.* 138. ſheweth) There is an efficient cauſe Caſuall; as if a man intend to do any unlawfull act, and in doing thereof another hurt enſueth, not intended, but by chance cleane beyond all expectation, or deſire, yet ſhall he be ſaid the author of that act not intended, (and ſo happening by chance) that did intend the firſt act.

Br.Cor.172. 3.Cor.50. Co.1.5. 3 Note alſo, that if divers perſons come in one company to do any unlawfull thing, as to kill, rob, or beat a man, or to commit any riot, or affray, or to do any other treſpaſſe, and one of them in doing thereof, killeth a man, this ſhall bee adjudged murder in them all that are preſent of that partee abetting him and conſenting to the act, or ready to aid him, although they did but looke on, &c. See *Stamf.* 40. *Fitz. Indictment* 22. *Plo.*98.

Nay, if they be not preſent, yet if they be in the ſame houſe, or upon the ſame ground, it is murder in them all. See the Lord *Dacres* caſe. *Cromp.*25.

Plow.100. See here 4 Note alſo, that all that are preſent, and ayding, abbetting, or comforting to another to doe murther, are principall murderers, although they ſhall give never a ſtroke. See more 4.*H.*7.18.13.*H.*7.10. *Fitz Coron* 309. *Co.*9. 67.112.*&* 11.5.

As if *A.* and *B.* fall out, and appoint the field, and they meet accordingly, each of them bringing company with them, *A.* killeth *B.* this is murder in all thoſe that came with *A.* as his ſecond, or abetting, comforting, or ready to aſſiſt or ayd him, for that the preſence of theſe other that came with *A.* is a terror to *B.* and an incouragement to *A. Vide ibid. & Plo.*98.

And yet if *B.* commeth in the company of *C.* who of his malice pretended doth go to kill *D.* and when *B.* ſeeth them fighting together, hee taketh part with *C.* ſuddenly (not having any former malice to *D.*) and ſtriketh at *D.* with the other, and *D.* is thus ſlaine amongſt them, this is but manſlaughter in *B.* for that he had no malice precedent. *Plo.*100. See the caſe of the maſter and his ſervants here before. But note, that the cauſe of the comming of *B.* being unknown to *D.* his preſence might, and in likelihood did ſtrike terrour in *D*; and ſo the preſence of the ſervants did or might ſtrike a terrour in the party murdered, and gave incouragement to the maſter.

5 Note alſo, that in caſe of murder, it is not materiall who giveth the firſt blow; for if he that is ſlaine gave the firſt blow, yet if there were

malice prepenced in the other, it is murder in him that killed him.

6 Alſo in caſe of poyſoning, the party poyſoned muſt die thereof, within a yeere and a day, after the poyſon received.

Alſo if a man do beat or hurt another, whereof he dieth, to make it murder or other homicide, the party hurt muſt die within a yeere and a day next after the hurt done, or ſtroke given. But to have an appeale, it ſhall have relation to the death, and not to the ſtroke, ſo as the appeale muſt bee brought within the yeere after the death, and not after the ſtroke.

7 Note alſo in murder, or other homicide, the party killed muſt bee in *eſſe*, (*ſc. in rerum natura*, and borne into the world.) For if a man hurteth a woman with child, whereby hee killeth the infant in its mothers wombe, by our Law (at this day) this is no felony; neither ſhall hee forfeit any thing for ſuch offence: and whether (upon a blow or hurt given to a woman with child) the child die within her body, or ſhortly after her delivery, it maketh no difference: yet in ancient time it was holden to bee felony; and M. *Bracton* took it to bee homicide, if the blow were given, *poſtquam puerperium animatum fuerit*: But if the mother of the child die within a yeere and a day after ſuch hurt done to her, and upon that hurt, this is felony.

So if the Adulterer &c. counſelleth the woman to murder the child when it ſhall be borne, and ſhee doth accordingly, the Adulterer is acceſſary to this felony, by this his counſell given before the birth. *Co.* 7. 9.

Alſo if one killeth a man unknown, yet it is felony. *Abr. d'Aſſ.* 76.

8 Compulſion alſo is a good excuſe in our Law; ſo as if any mans arme bee drawn by compulſion, and the weapon in his hand by meanes thereof doth kill another, this is not felony in him whoſe arme was ſo drawne, &c. *Plo.* 19. *a.*

9 Involuntary ignorance excuſeth alſo with us: So as if an infant not having intelligence, or a man of *non ſane memorie*, ſhall kill another, this is no felony in them. See hereof *hic poſtea*.

10 Intent to do a felony or murder, is not puniſhable by the Common Law of this Realme, untill the act bee done: But in Treaſon, and in ſome other particular caſes by ſtatute, the intent may be puniſhed. *Doct. & Stud.* 132. *bis.*

In caſes of murder or poyſoning, the offenders ſhall not have the benefit of Clergy. 1. *E.* 6. *c.* 12. 23 *H.* 8. 1. *&* 26 *H.* 8. 12.

Note alſo, that by the Law of God no recompence was to bee taken for the life of a murderer. *Numb.* 35. 31.

And by divers old ſtatutes, no charter of pardon ought to bee granted to any perſon in caſe of murder, or other homicide, ſave only where the King may do it by his oath, that is to ſay, where a man killeth another in his owne defence, or by misfortune. See *P. Pardon* 1. See alſo the ſtatute of 6. *Edwar.* 1. *cap.* 9. 2. *Edwar.* 3. *cap.* 2. 4. *Edwar.* 3. *cap.* 13. *&* 14. *E.* 3. *cap.* 15.

And by our Law at this day, a pardon of all felonies will not diſcharge murder, except the pardon bee with a *Non obſtante*, &c. or that murder be expreſly mentioned in the Pardon. See *Co.* 6. 13. *b.*

Neither will a Pardon of all felonies diſcharge a man that is attainted of felony, except alſo the attainder and the execution bee pardoned:

See

See 9. E. 4. 29. Co. 6. 13. b.

Note, that hee which hath a Pardon for felony, if hee hath not found ſureties for his good abearing, or if afterwards during his life, hee ſhall breake the peace; ſuch pardon ſhall bee holden for none, but that hee may be hanged, notwithſtanding his pardon; for by the pardon, the offence, 3. H. 7. fo. 7. *tegitur non tollitur.* See the ſtatute 10 E. 3. c. 3. *P. Pardon* 5. & 3. H. 7. 7. where one was executed upon this ſtatute, for making an affray after his pardon. *Br. Coron.* 134. 17 H. 8. 4. Prer. 17.

None have authority to pardon any treaſon, murder, or other felony, or any acceſſary to the ſame, ſave onely the King; it being one of his royall prerogatives.

Manſlaughter. CHAP. 94.

MAnſlaughter in the right ſignification thereof implyeth all manner of Homicide, and is the generall, as well to murder as to the reſt: Nevertheleſſe for that in common ſpeech it is reſtrained to manſlaughter by Chancemedley alone, in that ſenſe I will here write of it.

Manſlaughter, otherwiſe called Chancemedly, is the killing of a man feloniouſly, *ſc.* with a mans will upon preſent heate, and yet without any malice forethought; as when two doe quarrell and fight together upon the ſudden and by meere chance, without any malice precedent, and one of them doth kill the other, this alſo is felony of death, *Pla.* 101. *Br. Coron.* 222.

And yet in caſe of manſlaughter (not being within the ſtatute of 1. *Iac.*) the offender ſhall have the benefit of Clergy: and by the law of God, there was a city of refuge appointed for ſuch to flie unto. *Exod.* 21. 13. *De.* 19. 34. For in ſuch caſes of chance (as we terme it) *ſc.* where the offendor hath not laid wait, nor hated in time paſt, the ſame Scripture ſaith, that God offered the party ſo ſlaine into the hands of ſuch manſlayer.

Two fall out upon the ſudden, and fight, and the one breaketh his weapon, and a ſtranger ſtanding by (yet being none of their company) lendeth him a weapon, and therewith hee killeth the other; this is manſlaughter as well in him that killed the other, as in the ſtranger who lent him his weapon. Dalt. cap. 16.

A and *B.* fall out upon a ſudden, and fight, and *A.* is ſo fierce, that hee runneth upon the others weapon, and is ſlain, yet this ſeemeth manſlaughter in *B.* for he would have fled to ſome wall or ſtraighe, &c. *Quare.*

And if *B.* had fled to a wall, &c. and *A.* purſueth him, and *B.* perceiving that *A.* would aſſault him, holdeth his weapon betweene them, and *A.* runneth upon the weapon, and is ſlaine, this is Homicide in his owne defence, and for which *B.* ſhall forfeit onely his goods: but otherwiſe it had beene if *B.* had fallen, and lying upon the ground had drawne his knife or dagger, and *A.* falleth thereon, and ſo is ſlaine; for then *B.* could not flie, nor make any other defence for his ſafety, and therefore here *B.* ſhall not forfeit his goods, nor be culpable of his death, but be diſcharged: for *A.* in manner killed himſelfe. See hereof *poſtea, & cap.* 92. 8. 112. b. manſ. 16. 2.

Two combat together upon the ſudden and part, and preſently after meete and fight againe, and the one killeth the other: or the one preſently fetcheth a weapon, and commeth and killeth the other; theſe ſeeme

but manſlaughter, for that it is done all in one continuing fury, which was at the firſt without malice, and could not in ſo ſhort time be appeaſed, or aſſwaged. *Cromp.* 23.*b.* 24. *a.* 26. *a.b.*

So if two have borne malice the one to the other, and be reconciled, and after meeting againe, they fall out upon new occaſion, and by agreement immediately they goe into the field to fight, and the one killeth the other, this ſeemeth but manſlaughter, (*cauſa quæ ſupra*) unleſſe the reſpite or diſtance of time or place had beene ſuch, that by reaſonable conjecture their heat might be aſſwaged. Lamb. 14.

See more of Manſlaughter before in Murder, and after in Miſadventure.

What perſons are chargeable with Homicide, and what not. CHAP. 95.

Nō compos mentis.

IF one that is *Non compos mentis*, or an ideot, kill a man, this is no felony; for they have not knowledge of good and evill, nor can have a felonious intent, nor a will or minde to doe harme: And no felony or murder can be committed without a felonious intent and purpoſe, for it is called *Felonia, quia fieri debet felleo animo. Co.* 4. 124. *b.* Fitz.N.B. 202. 21.H.33. Plo.19. Co.4.124.

And againe, *actus non facit reum, niſi mens ſit rea*; and a mad man is *Amens*; (*i.e.*) *ſine mente*, without his minde or diſcretion, and is onely, and enough puniſhed by his madneſſe. *Co.L.*247.

So it is, if a lunaticke perſon killeth another during his lunacy, it is no felony; (*Plo.*260) for all acts done by him in his lunacy, are as the acts of an Ideot. *Co.*4.125.

Vner. tiels perſons ſerra puny in treſpas, pur hurt fait al corps du'auter.

If another man ſhall upon malice procure a mad man to kill another, though the mad man ſhall bee excuſed, yet the incitor or procuror ſhall bee puniſhed as a principall. 8 *E.* 57. *Vide hic cap.* 108.

Now there be three ſorts of perſons accounted *Non compos mentis*, to this purpoſe, and the like.

1 A foole naturall, who is ſo (*a nativitate*) from his birth; and in ſuch a one there is no hope of recovery. Co.124.

2 He who was once of good and ſound memory, and after (by ſickneſſe, hurt, or other accident, or viſitation of God) loſeth his memory.

3 A lunaticke, *qui gaudet lucidis intervallis*, and ſometimes is of good underſtanding and memory, and ſometimes is *non compos mentis*.

Infant.

An Infant of eight yeares of age, or above, may commit Homicide, and ſhall bee hanged for it, *viz.* if it may appeare (by hiding of the perſon ſlaine, by excuſing it, or by any other act) that he had knowledge of good and evill, and of the perill and danger of that offence. See 3. *H.*7. 1. & 12. *Stamf.* 27. *Fitz. Coron.* 118, 129, *& Br. Coron.* 133, 136.

And yet Sir *Ed. Coke* upon *Littleton f.* 247. ſaith, that it is of an Infant, untill he be of the age of 14 yeares (which in Law is accounted the age of diſcretion) as it is with a man *Non compos mentis*; and that in criminall cauſes (as felony, &c,) his act and wrong ſhall not be imputed to him, for that *Actus non facit reum, niſi mens ſit rea, &c.* Sir. *Fr. Bacon.* 38. accordeth.

But an Infant of ſuch tender yeares, as that hee hath no diſcretion or intelligence,

intelligence, if he kill a man, that is not felony in him, 3 *H.7.1.b.*

Plow.19. If one that is dumbe killeth a man, it is felony: yet *quære* how he shall be arraigned.

F.Coro.193 Stam.f.16. A man borne deafe and dumbe, killeth another, that is no felony: for hee cannot know whether he did evill or no; neither can he have a felonious intent, &c. See hereof, *tit. Surety for the peace antea. Cap* 68. Otherwise, if hee were not so borne, but becommeth so afterwards. See *Br.Coro.* 101. *&* 217. that a man which can neither heare nor speake, may commit felony, and shall be imprisoned, &c.

Yet note in these former cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by involuntary ignorance, and therefore the law accounteth such act of theirs to be no felony.

Plo. 9. Co. 4.125. But if a man that is drunke, killeth another, that is felony of death, for it is a voluntary ignorance in him, in as much as such ignorance commeth to him by his owne act and folly. Sir *Ed.Co.L.*247. calleth a drunkard, *voluntarius Dæmon*, and saith that such a one hath no priviledge thereby, but what hurt or ill soever he doth, his drunkennesse doth aggravate it.

Misadventure. CHAP. 96.

BY the Statute of *Marl. cap.* 25. killing a man by misfortune onely, shall not be adjudged murder.

Now Homicide by misaduenture or misfortune, is when any person doing of a lawfull thing, without any evill intent, happeneth to kill a man casually; by the Law of God there was a City of refuge appointed for such person to flye unto, *Numb.* 35. 15. *&* 20. *Iosh.*20. 3. for such an act happening in such sort, seemeth to bee the worke of God himselfe, see *Prov* 16. 33. *&* *Exod.* 21. 13. And by our Law now, this is no felony of death, neither shall there bee any judgement of death given upon him, but hee shall have his Pardon of course for his life and his lands; yet hee shall forfeit his goods, in regard that a subject is killed by his meanes. See *Stamf.* 16.*a.b. Fitz. Coron.* 69. 302. *&* 354. *Br. Forf.* 9. *&* *Co.* 5. 91. *b.*

See Exod. 21.20.21. Stanf.12. As if a Schoolemaster in reasonable manner beating his scholler, for correction onely, or a man correcting his childe, or servant in reasonable manner; and the scholler, childe, or servant happen to die thereof, this is Homicide by misadventure, *Cro.*136.

So if a man shooting at buts, prickes, or other lawfull marke, and by the shaking of his hand, or otherwise against his will, hee killeth one that standeth or passeth by, 21 *Hen.*7. 29. *Rede* 6. *Ed.* 4.7. *Br.Coron.* 59. *&* 148.

So if a Carpenter, Mason, or other person doth throw, or let fall a stone, tyle, or peece of timber from an house, or wood, or other thing from a cart, &c. (and giueth warning thereof) and another is killed thereby against his will; 21 *H.7. Br. Coron.* 59.

Ed.4.7. F.Cor. 198. Plo.19. So if a Labourer that is felling, or cropping of a tree, and the same, or part thereof, falleth and killeth a man.

So if the head of his hatchet, or other toole falleth from him, and

happeneth to kill one ſtanding by, *Deut.* 19. 5. accordeth.

So if a man bee (in due and convenient time) doing any other lawfull thing, that may breed danger to ſuch as paſſe by, and ſhall give warning thereof, ſo that ſuch as paſſe by, may heare and flye the perill, and yet another paſſing that way ſhall be killed therewith. 11 H. 7. 23. See Br. Cor. 229. contra.

And ſo if men ſhall run at Tilt, Iuſt, or fight at Barriers together by the Kings commandement, and one of them doth kill another, in theſe former caſes and the like, it is miſadventure, and no felony of death.

And yet in ſuch caſes of Miſadventure, as alſo where one killeth another *Se defendendo*, by the Common Law theſe offences were felony of death, and the offendor ſhould have dyed for the ſame; but now by the ſtatute ſuch offendors are to have Pardon for their life and lands, yet their goods remaine forfeit as before (at the common law.) See the ſtat. *6 E. 1. c. 9. & 2 E. 3. c. 2. 21 E. 3. fol. 17. Br. Co. 40. & for.* 9. 13. 15. Co. 3. 61.

Alſo in theſe caſes of miſadventure, and in the former caſes of homicide committed by Infants, and other perſons, being *Non compos mentis*, as alſo where one killeth another in defence of his perſon; they ſhall be diſcharged in this manner, *ſc.* if they deſire to purchaſe their pardon they muſt upon their tryall, plead not guilty (and ſhall give in evidence the ſpeciall matter, and then this ſpeciall matter being found by verdict, they ſhall bee bailed) and then they muſt ſue forth a *Certiorari*, to have this record certified to the Lord Chancellour of *England*, who thereupon ſhall make them a Charter or Pardon of courſe under the great Seale, without ſpeaking or ſuing to the King for it. See *Stamf.* 15. 16. Fitz. 24. & 24. b. Br. Cor. 1. See Stat. 6 E. 2. 9. 4 H. 7. f. 14. Regi. 309.

Unlawfull act.

But if a man be doing of an unlawfull act, though without any evill intent, and he happeneth by chance to kill a man, this is felony, *viz.* manſlaughter at the leaſt, if not murder, in regard the thing hee was doing, was unlawfull, *Finch fol.* 75. Stamf. 16.

As ſhooting of arrowes, or caſting of ſtones into an high way, or other place, whither men doe uſually reſort. Stamf. 19.

So of fighting at Barriers, or running at Tilt or Iuſts, without the Kings commandement, whereby a man is ſlain: and although it were by the Kings commandement, yet it was holden felony by the Iuſt. *tempore H.* 8. 11 H. 5. Br. Cor. 23.

Playing at hand ſword, bucklers, footboll, wreſtling, and the like, whereby one of them receiveth a hurt, and dyeth thereof within a yeare and a day; in theſe caſes, ſome are of opinion, that this is felony of death: ſome others are of opinion, that this is no felony of death, but that they ſhall have their pardon of courſe, as for miſadventure, for that ſuch their play was by conſent, and againe there was no former intent to doe hurt, nor any former malice, but done onely for diſport, and tryall of manhood. 11 H. 4. 27. Crom. 28. & 29. 2. Gro. 118. 136. P. R. 18.

A man caſting a ſtone at a bird, or beaſt, and another man paſſing by, is ſlaine therewith, *quære* whether this bee manſlaughter, or but miſadventure. The opinion of *Finens* chiefe Iuſtice in 11 *H.* 7, *fol.* 23. is, that if a man caſt a ſtone over a houſe, and killeth a man, this is no felony, but miſadventure: But M. *Brook* abridging this caſe, ſaith, it ſeemeth to be no law, but where the caſting of a ſtone is lawfull, as where a Maſon is untiling of a houſe, &c. but to caſt it for pleaſure, and not in lawfull labour, ſeemeth to bee felony; and ſo was the opinion of M. *Bracton* and M. *Stamford.* Fitz. Cor. 302. & 319. See Numb. 35. 23. Br. Cor. 19. Cro. 118. 136. Stamf. 15 & 16.

Caſu-

Caſuall Death. CHAP. 97.

ALſo a man may be ſlaine by other caſualty, than by the hands or meanes of another man; as by the fall of a houſe, pit, or tree, &c. upon him; or be killed by a Bull, Beare, or other beaſt, or by a horſe, or Cart, &c. or be killed by ſome fall, which he himſelfe taketh.

And in theſe and the like caſes, obſerve theſe rules,

1 Firſt if a man be ſlaine in any ſuch manner, yet if it bee by the meanes or procurement, or wilfull default of another man, this ſhall bee felony in the party procuring or cauſing it.

2 The thing which is the cauſe of ſuch caſuall death ſhall be forfeit to the King, taken for a *Deodand*, and diſtributed in almes by the Kings Almner; for *Deodand, eſt quaſi Deo dandum, id eſt, in Eleemoſinas erogandum.* But the Almner hath no intereſt, as it ſeemeth, in ſuch goods, but hath onely the diſpoſition of the Kings almes, *durante bene placito*, ſo that the King may grant them to any other. See *Co.* l. 50. *Dyer* 77.

The office and duty of this Almner. See *Co. l.* 94.

Plo. 260. 3 The forfeiture ſhall have relation from the ſtroke given, ſo as the party or owner ſelling thereof (*ſc.* of ſuch thing as was cauſe of ſuch death) after the ſtroke given, taketh not away the Kings right, but that he ſhall have it as forfeited, notwithſtanding ſuch ſale.

Co. 5. 110. 4 *Deodands* are not forfeited until the matter be found of Record, and therefore they cannot be claimed by preſcription.

Co. 5. 110. P. Cor. 398. Stanf. 121. P. Cor 10. 5 The Iury which finde the death of the man, muſt alſo finde and appreiſe the *Deodand*, and the Sheriffe ſhall be charged with the price of ſuch *Deodand*, and ſhall levy the ſame of the towne where it falleth, although it were not committed to the towne to keepe: and therefore it behooveth the towne to ſee it forth comming. See the ſtatute *de officio Coronatoris*, 4 *Ed.* 1.

P. Cor. 389. Stanf. 21. 6 If he that is ſo ſlaine be under 14 yeares of age, nothing ſhall be forfeit to the King as a *Deodand* for him, as it ſeemeth.

P. Indictment. 27. Stanf. 21 And if a man that is unknowne be found dead in the field, his apparell and money about him ſhall bee given to the poore, &c. And if hee were knowne, then his goods ſhall be delivered to his Executors or Adminiſtrators, or to the Ordinary; but ſhall not be taken as a *Deodand*, in either caſe (for they are not of the nature of a *Deodand*) they being no cauſe of his death.

Dyer 77 Co. 5. 110 Next what ſhall bee forfeited and taken for a *Deodand*; The old rule is, *Omnia quæ movent ad mortem, ſunt Deodanda*: And yet beſides *Deodands* may be of ſome things that a man ſhal move or fall from, though the thing it ſelfe moves not: as to fall from a ſhip, carr, mow of corne or hay, &c. So as *Deodands* are any goods which doe cauſe, or are occaſion of the death of a man by miſadventure. *Co. Ibid.* See more. *Fitz. Cor.* 314. 326. 341. 342. 348. 388. 389. 398. 401. 409.

Br. forf. 112. If a man killeth another with my ſword (or other weapon of mine) my weapon ſhall bee forfeit as a *Deodand*: for it ſhall be adjudged my fault, that I did not keepe my weapon from him. *Doct. & St. fo.* 156. *b.*

If I ſhall lend another man my ſword or other weapon, knowing him

him to bee minded to goe fight, or make an affray therewith, and hee with my weapon in ſuch fight or affray, killeth one, *quare* if this be not felony in me, for you ſhall finde that an Abbot that lent a bow and arrowes to another, to the intent to kill the Kings Deere, was therfore fined and ranſomed. *Cromp. Author des Courts fol.* 191.

The inquiry of ſuch caſuall death, belongeth alſo to the Coroner: but if the Coroner cannot have the ſight of the body, and ſo cannot enquire thereof, *quare* how the King ſhall be intituled to the goods. *vide hic cap.* 92. *fine.*

Homicide upon neceſsity. CHAP. 98.

Commanded. SOmetime the Iuſtice of law commandeth a man to bee put to death: As when the Iudge hath pronounced ſentence of death againſt an offendor (attainted by due courſe of Law) there in execution of Iuſtice) an officer, or other perſon thereto lawfully deputed, may orderly execute ſuch judgement or ſentence according to his Warrant; and ſuch ſentence or judgement pronounced by the Iudge, and after lawfully executed by the officer, leaveth the name and nature of murder or homicide, and is called Iuſtice, or rather Iudgement, which is the lawfull execution of Iuſtice.

But if the officer, or other perſon, ſhall proceed therein upon his owne authority, without warrant, or *Non obſervato ordine juris*; as where an offendor hath judgement given upon him, to be hanged, if the Sheriffe or other officer, &c. ſhall behead him, or by other meanes put him to death, this is felony in ſuch officer, &c. *Co.* 7. 14. Stamf. 17. See Dodd. Sum. fol. 133.

Alſo if a ſtranger being not thereto lawfully deputed, ſhall (upon his own authority) put to death an offendor that is condemned to dye, this is felony. See *Co.* 7. 14. *a.* Stamf. 15.

Nay if the Iudge himſelfe, who gave the judgement of death upon an offendor, ſhall after put the ſame offendor to death, it is not juſtifiable by him.

If the Iuſtices of Peace ſhall arreigne a man of treaſon before them at their Seſſions, who is found guilty, &c. and thereupon is hanged; this is felony as well in the Iuſtices, as in the Sheriffe or officer which ſhall hang him, for that the Iuſtices of peace had no authority therein, but it was *coram non Iudice. Lecture M. Cocke.* See alſo *Co.* 10. *fol.* 76.

If the Iuſtice of peace ſhall arraigne a man of felony, upon an Endictment of treſpaſſe, whereupon he is hanged, this is felony in the Iuſtice, but not in the Sheriffe or Officer, *Lectur. M. Cock.* The difference betweene theſe two caſes appeareth in my Lord *Cookes Reports, lib.* 10. *f.* 76. *ſi.* for that in this laſt caſe the Iuſtices of peace had juriſdiction of the cauſe, and therefore although they proceeded *inverſo ordine*, or erroneouſly, yet the officer is excuſable.

Tolerated. Sometimes alſo the Iuſtice of Law tolerateth and ſuffereth a man to bee ſlain, *ſc.* for the neceſſary execution and advancement of Iuſtice, which otherwiſe ſhould be left undone. And in ſuch caſe the law of the land imputeth not it as any fault to him that ſhall ſo kill a man, but freely diſchargeth him thereof without the Kings pardon.

As a Sheriffe, Bailiffe, or any other perſon who hath a lawfull Warrant to F. Co. 261. Stamf. 15.

to arreſt a man indicted of felony, may well juſtifie the killing of him, if hee will not ſuffer him to be arreſted, and yeeld himſelfe, and that they cannot otherwiſe take him. See 22 *Aſſ.* 55 & *Fit Cor.* 288 & 328.

F.Cor.263. stanf.13. And ſo every perſon whatſoever, without any warrant, may apprehend a felon upon hue and cry, or otherwiſe: and if he wil not yeeld to be arreſted, but ſhall reſiſt or flie, the purſuer may kill him without blame. See *Fitz. Cor.* 328. & *Co.* 5. 109. *b.*

Herewith alſo agreeth the Doctor and Student. *l.* 2. *c.* 41. ſaying, If any perſon that is no officer, would arreſt a man that is outlawed, abjured, or attainted of murder, or any other felony, and ſuch offendor ſhall diſobey the arreſt, and by reaſon of that diſobedience he is ſlaine, the other ſhall not be impeached for his death; for it is lawfull unto every man to arreſt, and take ſuch perſons, and to bring them forth, that they may be ordered according to the law.

F.Cor. 288. & 328. An offendor in felony is led towards the Gaole, and breaketh away from thoſe that conduct him, and maketh reſiſtance, or flyeth; his conductors may juſtifie to kill him, if they cannot otherwiſe take him againe.

22 Aſſ. 55. A priſoner in the gaole attempteth to eſcape, and having broken his irons, ſtriketh the Gaoler (comming in the night to ſee his priſoners) and the Gaoler ſlayeth ſuch a priſoner, this is no felony.

Cro. 24. 62. 30. & 158. Rioters, and ſuch as ſhall make any forcible entrie, or detainer, againſt the ſtatutes, if they ſhall reſiſt the Juſtices of Peace or other the Kings officer, or ſhall not yeeld themſelves, but ſhall ſtand at their defence, when the Juſtices of peace, or other Officer ſhall come to Arreſt or remoove them, if any of them happen to bee ſlaine, this is no felonie in the Juſtice of Peace, or Officer, or in any of their companie that killed ſuch Rioters, &c. *Lambt.* 310.

ſtanf. prerog. f. 46. Cro. 24. 30. Doct. & St. 133. *b.* ſtanf. 13. *c.* 4. The Sheriſe, Bayliſe, or other Officer commeth (by vertue of the Kings proceſſe) to arreſt another for debt, or treſpaſſe, who maketh reſiſtance, and thereupon is ſlain by ſuch officer, or any of his company, this hath bin taken to be no felony, *tamen quære*, what the law is at this day; for although the Sheriſe (being the Kings Officer) ought to ſee the kings commandement to be executed, yet that muſt be underſtood to be executed by all lawful means and wayes.

But in all theſe former caſes there muſt be an inevitable neceſſity, *ſc.* that the offendor could not be taken, &c. without killing of him.

17 H. 6. 31. Alſo in an appeale of felony, if the appellant and appellee doe ioyne to try it by battell, and therein one doth kill the other, as the law doth allow ſuch triall, ſo doth it allow the event to be juſtifiable, as depending upon the iudgment of God, who giveth victory according to Truth.

So a man as a champion in triall upon a writ of right, if hee killeth the other, this is no felony. *Plo.* 9 *b.*

Alſo when one man killeth another in the neceſſary defence of himſelfe, or his, thereby to deliver himſelfe, his poſſeſſions or his goods, or ſome other perſons, which he is bound to defend from perill, and which cannot otherwiſe eſcape, this is homicide tolerated upon neceſſity. As *Se defendendo tolerated.*

24. H. 8. c. 5. F. Forſt. 2. To kill an offendor, which ſhall attempt feloniouſly to murder or rob mee in my dwelling houſe, or in or neere any high-way, cart-way, horſe-way, or foot-way, or that ſhall attempt burglary, or feloniouſly to breake my

my dwelling houſe in the night; this is juſtifyable by my ſelfe, or by any of my ſervants, or company, whom the ſaid evill doers ſhall ſo attempt to rob or murder; or by any perſon being in my dwelling houſe, which the ſame evill doers ſhall attempt ſo to breake by night. Co. 5. 19. & 11. 82. Exod. 22. 2.

And this being ſo found by verdict upon tryall, wee ſhall bee all diſcharged without loſſe of life, lands, or goods, or pardon, 24 *H.* 8. *cap.* 5. *Stamf. de Prarog.* 46.

To kill a thiefe or murderer, (*ſc.* one which goeth about to rob, or murder mee) in the defence of my perſon, my houſe, or goods, was no felony, but juſtifyable by the common law, before the ſtatute of 24 *H.* 8. *c.* 5. (which ſtatute doth alſo declare the Law to be ſo, and doth enact it) *Stamf.* 14. See *Co.* 5. 91. & 11. 82. *Br. Coron.* 100. 102. And yet at the Common Law there was this difference, *ſc.* that he which killed a thiefe which would have robbed him upon the high way, ſhould forfeit his goods; but hee which killed one who would have robbed or murdered him in his houſe, ſhould forfeit nothing, *Co.* 11. 82. ſee *Exod. cap.* 22. 2 3. 26. Aſſ. 32. F. For. 26. 305. & 330.

And if one, or moe come to burne my houſe, I, or any of my ſervants, may juſtifie to ſhoot forth of my houſe at them, or may iſſue forth, and to kill them, for ſuch intent of theirs is felonious. *Br. Coron.* 100. 20 Aſſ. 22. Finch.

If a woman kill him that aſſaileth her to Raviſh her, this is juſtifiable by the woman without any Pardon. Sir *Fr. Ba.* 34.

If divers be in danger of drowning by the caſting away of a boat or barge, and one of them gets to a plancke, or on the boats ſide, to keepe himſelfe above the water, and another to ſave his life thruſt him from it, whereby hee is drowned, this is neither *ſe defendendo*, nor by miſadventure, yet juſtifyable, *Idem* 30.

Prohibited. But if a man ſhall forcibly get, and keepe poſſeſſion of a houſe, and the other ſhall come in the night and fire this houſe, they within cannot iuſtifie to ſhoot and kill him, or any of his company, for that they in the houſe were there unlawfully. See *Cromp.* 26. *b.*

If one commeth (in the day time) to my houſe, to beat mee, and doth make an aſſault upon me in my houſe, and fighteth with me, and I kill him in defence of my perſon, yet in this caſe I ſhall forfeit my goods, and muſt have the Kings pardon, except it be found, that the aſſailant came with a felonious intent to kill or rob me. F. Cor. 305. Co. 5. 91.

And if one commeth (in the day time, or in the night) to enter into my houſe, pretending title thereto, and to put mee out of my poſſeſſion, and I kill him, this ſeemeth to be manſlaughter in me.

Note if one kill a true man, in defence of his perſon, there ought to bee ſo great a neceſſity, that it muſt bee eſteemed to bee inevitable, or otherwiſe it will not excuſe, but it is felony although that the other purſues him: and therefore hee that ſhall bee aſſaulted by a true man, muſt firſt flye as farre as hee can, and till hee bee letted by ſome wall, hedge, ditch, preſſe of people, or other impediment; ſo as hee can flye no further without danger of his life, or of being wounded or maimed: and yet in ſuch a caſe if hee kill the other, hee ſhall bee committed till the time of his tryall, and muſt then get his pardon for his life and his lands, (which pardon notwithſtanding he ſhall have of courſe) but he ſhall loſe and forfeit his goods and chattels, for the great regard which the Law hath of a mans life. Stamf. 15. 2. Specialm. Inſtic. *The penalty*

Fitz.

Fitz. Coron. 116. Co. 5 91. *b.* See hereof *paulo antea tit. Felony by miſadventure.*

Co. 5. 91. 4 H. 7. 2. *A.* maketh an affray upon *B.* and ſtriketh *B.* and *B.* flyeth ſo far as hee can for ſaving his life, before any ſtroke giuen by *B.* and *A.* continueth his aſſault, whereupon *B.* doth alſo ſtrike *A.* and killeth him, this is Homicide in his owne defence: otherwiſe it ſeemeth to ſome, if *B.* had ſtroken the firſt blow, or had ſtroken before he had fled: and yet by other good opinions the firſt ſtroke, or who began the affray, is not materiall, but the whole matter will conſiſt upon the inevitable neceſſity (*ſc.* whether the ſaid *B.* who killeth *A.* could not haue eſcaped with his life, &c. without killing *A.*) for otherwiſe it will not excuſe *B.* for *cuncta prius tentanda*; and as it is a charitable, ſo it is a ſafe principle (in theſe caſes) not to uſe an extremity, till thou haſt tryed all meanes.

38 l. c. 9. 1. Pardon 1 Staml. 15

1. Cor. 284. & 286. Staml. 15. Alſo it is holden in the former caſe, if *B.* (before hee had fled) had ſtriken *A.* and giuen him divers wounds, that yet if hee flye to a ſtreight before he give *A.* the mortall wound, and then he giveth his deaths wound, this is homicide in his owne defence.

1. Cor. 387. Cromp. 22. ib. But in the former caſe, if *B.* upon malice prepenced had firſt ſtroken *A.* and then *B.* flyeth to a ſtreight or wall, and *A.* purſueth him, and ſtriketh him, and *B.* killeth *A.* thereupon, this is murder in *B.* for the malice prepenced was the ground and beginner hereof.

Yet if there had beene former malice betweene *A.* and *B.* and they meete ſuddenly, and *A.* aſſaulteth *B.* and *B.* before any ſtroke by him given flyeth ſo far as he can, and *A.* purſueth him, and then *B.* killeth *A.* this ſeemeth to bee homicide in his owne defence, notwithſtanding the former malice.

11 El. Cromp. 27. *Copſtones* caſe: There was malice betweene *Copſtone* and one *S.* and they had fought diuers times, and after met ſuddenly in *London* ſtreet, and *C.* told *S.* that he would fight with him, and *S.* anſwered that he had nothing to ſay unto him, and *S.* went to the wall, and after *C.* aſſaulted *S.* and then *S.* ſtroke and killed *C.* and it was found that *C.* began the affray, and *S.* was thereupon diſcharged without forfeiting any thing: But that was by force of the ſtatute 24 *H.* 8. *ca.* 5.

A man in fight falleth to the ground, there his flying, &c. is not neceſſary, &c. ſee hereof before.

Staml. 14. Alſo if a thiefe aſſaults to rob or kill me, I am not bound to flye to a wall, &c. as I muſt in caſe a true man aſſaults me.

Co. 98. If an Officer of Iuſtice, or Miniſter of the Law, in the execution of his office, be aſſaulted, he is not bound to flye to a wal, &c. as other ſubjects are.

21 H. 7. 39. Alſo the ſervant may juſtifie the killing of another, in defence of his maſters perſon or houſe, if the hurt cannot be otherwiſe avoyded. *Br. Coron.* 63.

Alſo the ſervant may juſtifie the killing of him, who robbed and killed his maſter, ſo that it be done preſently.

In the defence of the poſſeſſion of my goods, I may juſtifie to beat him that ſhall wrongfully take them from me; but I cannot iuſtifie to kill him, except he be a thiefe.

So then to kill a true man in defence of my perſon, in caſe where there is an inevitable neceſſity, (*ſc.* that I firſt ſhall flye ſo farre as I can for ſaving my life, &c.) this is no felony of death, &c. But otherwiſe it is to kill a true man in defence of my houſe, lands, or goods, that is manſlaughter (at leaſt) as it ſeemeth.

11 Ed. 2. Foreſts 4. Staml. 13. 14. If any forreſter, park-keeper, or warrener, or any in their company, ſhall

ſhall kill an offender in their Forreſt, Park, or Warren, which (after huy and cry levied to keep the peace, and to obey the Law) will not yeeld themſelves, but will fly, or defend themſelves by violence, this is no felony: Yet *quære*, if there were any former malice in ſuch Keeper. But if any ſuch Keeper by reaſon of any former malice, will lay to any mans charge, that he came to do hurt, whereas he did not, neither was found wandring nor offending, and ſo kill him, this is felony in ſuch Keeper. Cromp. 32.

And ſo in the former caſes where a man is ſlaine for the execution of Iuſtice, *ſc.* where the offender ſhall diſobey the arreſt, reſiſteth, or flieth, and ſo is ſlaine: as alſo where any man ſhall be ſlaine by an officer, or other perſon, in keeping or preſerving the peace; yet if ſuch manſlaughter, or killing of ſuch an offender be committed wittingly, willingly, and of purpoſe, under colour of execution of Iuſtice, or keeping of the peace, this is felony. See the ſtat. 1. *Jac. Regis, cap.* 8.

Burglary. CHAP. 99.

BVrglary in the naturall ſignification, is nothing but the robbing of a houſe; but in our Law it is taken to be when one or moe in the night time, do break a dwelling houſe, or a Church, or the wals or gates of a City, or walled Towne, with an intent to rob, or to do any other felony, although he or they take or carry away nothing, yet it is felony of death, and the offenders ſhall not have the benefit of the Clergy. *Dyer 99. Stamf.* 30. *Fitz. Coron.* 185. 264. 11. H. 7. 18. El.

The times. First for the time: Burglary cannot be committed in the day time, but only in the night, for all indictments of Burglary be, *Quod nocturno tempore fregit*; And the night (to this purpoſe) beginneth at the Sun-ſetting, and continueth to the Sun-riſing: And therefor to break a houſe, &c. after the Sun ſetting, and before it be dark; or after day light in Summer, and before the Sunne riſeth, is Burglary. Br. Coron. Stamf. 30. Co. li. 3. f. 21. H. 7. See the ſtat. Watch.

The manner Next, for the manner: It is holden (by ſome good opinions) that if a man break the houſe to do felony, and yet entreth not, it is no Burglary; and that the Indictment muſt be *fregit & intravit*. And yet by the opinion of *Shard.* 27. *aſſ.* 38. and by the opinions of Sir *Anth. Brown*, Sir *Edward Montague*, and Sir *Rob. Brooke*, late chiefe Iuſtices of the Common Pleas, and others, (as M. *Crompton* reporteth) if a man do but attempt or enterpriſe to break or enter into a dwelling houſe by night, to the intent to rob, or kill any perſon there, though he make no actuall entry, yet it is a full and compleat Burglary: for in ſuch caſes *Voluntas reputabitur pro facto*. Stamf. 30. Dyer 99. Br. Coron. Cromp. 32. 33.

As to put back the leafe of a window with his dagger.

To draw the latch of the doore,

To turne but the key, being on the inner ſide of the doore.

So to break the glaſſe-window, and to draw out any goods there with a hook, &c. 26. *El.* at *Staff. Aſſiſes.*

So to break a hole in the wall, and to ſhoot in thereby at any within the houſe.

So (the doore being opened by ſome of the houſe) if any the attempters ſhall diſcharge a dagge againſt any in the houſe, and in diſcharging his

his dagge ſhall hold his hand over the threſhold, though hee ſet no foot over.

So if upon an attempt of Burglary, they within the houſe ſhall caſt out their mony for feare, and the attempters take it away.

And yet there is no actuall entry made, in any of theſe caſes.

But if a thiefe ſetteth but his foot over the threſhold, or into any part of the houſe to commit felony, or ſhall for that purpoſe but put his hand in at the window, or at any hole in the wall, this much more ſhall convict him of Burglary.

Crom. 32. Alſo one being let down the chimney in the night to commit felony, it was adjudged Burglary by Sir *R. Manwood*, chiefe Baron, and yet he broke not the houſe.

So it is, to come into the houſe by the help of a key.

So if ſuddenly one come into the houſe by night, the doores being open, and the owner flieth to his chamber, and the offender is taken ſhoving at the chamber doore.

So is it, if theeves pretending that they be robbed, &c. ſhall come to the Conſtable, and pray him to make ſearch for the felons, and going with the Conſtable into a mans houſe to ſearch, they rob the good man of the houſe, this is Burglary.

2 El. Turner 34. So if a ſervant conſpiring with another to rob his maſter, ſhall open his maſters doore or window in the night, and the other entereth thereat, this is Burglary in the ſtranger, by the opinion of Sir *Roger Manwood*: And the ſervant is but a thiefe, and no burglar.

And yet the houſe was not broken in any of theſe caſes.

If a thiefe finde the doore open, and commeth in by night, and robs the houſe, and be taken with the manner, and breaks a doore to eſcape, this is Burglary; yet the breaking of the doore was without any felonious intent; But it is one entire act. Sir *Fr. Ba.* 65.

But if one commeth into my houſe in the day, and there hideth himſelfe till night, and then robbeth me, or if I ſhall lodge one in my houſe, and in the night hee robbeth me, (*ſc.* goeth out of my houſe, and taketh away ſome of my goods with him) yet this is no Burglarie, for that hee broke not my houſe: for the firſt caſe it was ſo holden at Derby. *Aſſ.* 32. *El. Crump.* 34. See *hic poſtea*. *Quare* of his opening the doore to go out and eſcape, if that ſhall not make it burglary.

11 H 4. 13. Alſo if divers come to commit burglary, and but one of them entereth and commit it, the reſt ſtanding about the houſe, or not far off, to watch that no help ſhall come; this is burglary in all that company.

But Maſter *Finch* (*lib.* 2.) deſcribeth burglary to be the breaking and entry of a houſe in the night, with a felonious intent to kill, or ſteale, although no man be killed, nor any thing ſtolne.

Now concerning the place; it may be either publick, or private; publicke as the Church, or wals, or gates of a City, or walled towne; private, as a dwelling houſe: and here commonly it is no burglary, unleſſe ſome perſon be at that time within the houſe. *The Places.*

And yet *An.* 36. *El. termino Paſch.* at an aſſembly of all the Iuſtices at Sergeants Inne, it was reſolved, that the breaking of a houſe in the night, with an intent to commit felony, is burglary, although that no

perſon be within the houſe; for the law is, that every man ought to bee in ſecurity or ſafety in the night; as well for their goods, as for their perſon; and that the ancient preſidents are, *Quod domum noctanter felonicè et burg. fregit*, without ſaying *domum manſionale*, or that any perſon was in the houſe; and that the reaſon why of late times theſe words have beene put into the indictment, (*ſc.* that ſome perſon was in the houſe) was, for that in ſuch caſes the benefit of Clergy was taken away: but now by the ſtatute 18 *Eli. cap.* 6. Clergy is taken away in all caſes of burglary; and therefore the Iudges then all agreed from thenceforth to put the ſame in execution accordingly. I have ſeene this thus reported out of a booke of *Popham's*, late Lord chiefe Iuſtice of the Kings Bench.

And if a man hath a dwelling houſe, and hee and all his family (upon ſome occaſion) are part of the night out of the houſe, and in the meane time one commeth and breaketh the houſe to commit felonie, this is burglary. Co. 4. 40.

So if a man hath two dwelling houſes, and ſometimes dwelleth at the one, and ſometimes at the other, and hath a family of ſervants in both, and in the night when his ſervants are out of the houſe, the houſe is broken by theeves, this is Burglary. Adjudged 38 *Eliz.* Co. 4. 40.

I have alſo ſeene a report of Iudge *Popham's*, that *termino trinit.* 36 *Eliz.* it was reſolved by the Iudges, That if a man had two houſes, and dwelt ſometimes in the one, and ſometimes in the other, if that houſe wherein hee neither then was, nor had any ſervants, were broken, &c. that this was Burglary, although no perſon then dwelt or were therein.

If one breaketh a Chamber in Lincolnes Inne, (or in any other houſe of Court, or Chancery, or in any Colledge in Cambridge, or Oxford, &c.) in the night, to the intent to commit felony there, this is Burglary, although there were no perſon in the ſame Chamber; for that Colledges and houſes of Court and Chancery be entire houſes, whereof ſuch Chamber is parcell; ſo that if any perſon ſhall be in any other Chamber within the ſame Houſe or Colledge at the ſame time, it is Burglary. Cromp. 33.

One P. was arraigned of Burglary. *Anno* 22 *Eliz.* for that he aſſaulted one of his companions of the Inner Temple, London, in his Chamber, there to have killed him in the evening, &c. but had his pardon. Cromp. 33.

A ſervant who lyeth continually within his maſters houſe, openeth the doores of his maſters houſe in the night to rob him, this is burglary, *Lect. Mr. Cook, tempore H.* 8. See *hic antea.*

A man commeth as a gueſt to eat or drinke in the day time, and there ſtayeth till night, and in the night time breaketh his chamber or any part of the houſe to rob his hoſt, this is burglary. *Ibid.*

A gueſt commeth to a common Inne, &c. and the hoſt appointeth him his chamber, and in the night the hoſt breaketh into his gueſts chamber to rob him, this is burglary. *Ibid.*

Alſo the breaking (in the night) of a ſtable, barne, or other out houſe adioyning to, or parcell of, or neere to the dwelling houſe, to the intent to ſteale, is burglary, though he take nothing *Fi. libro* 2. 2 Ed. 6. Br. Cor. 180 Lamb. 356.

At Sommer Aſſiſes at Cambridge, *Anno Dom.* 1616. two men were arraigned and condemned for burglary before Sir *Iames Altham*, knight, for

for robbing a backhouſe of *Robert Caſtle* Eſquire, in the night, which backhouſe was ſome eight or nine yards diſtant from his dwelling houſe, and only a pale reaching between them: ſo that though this offence bee not commited in the very body of the dwelling houſe, but in ſome other houſe neere unto it, and being parcell of or belonging to the dwelling houſe, it is burglary.

Co,11,37

But a booth or tent in a Faire or Market, are not eſteemed in Law for a dwelling houſe, nor the breaking thereof in the night time to bee burglary; although the robbing of them be made as penall as burglary, if the owner, his wife, children, or ſervants, were within the ſame.

22,Aſſ,95 Bri, 30, 126 Co,11,37

Laſtly, (to make it burglary) the purpoſe and intent for which the offender commeth, muſt of neceſſity bee, to kill, or rob ſome perſon, (or to commit ſome other felony) otherwiſe it is neither burglary nor felony. *The intent.*

And therefore to breake a houſe in the night, to the intent to kill any perſon therein, it is burglary, although he never touch him.

H,H,47 8,Cor,167

So it is, if the purpoſe were to rob, although the offender taketh away nothing.

8,Cor,185 1,264

But if a man break and enter a houſe by night, of purpoſe only to beat a man, that is but treſpaſſe. *Abr. d' Aſſ.* 75.

Bract,30 Co,11,31

And if the intent were to commit a Rape, which ſome think to be no felony by the Common Law, but only a treſpaſſe, then there is ſome doubt, ſaith M. *Lambert*: And M. *Crompton* ſaith, that if a man breaketh another mans houſe in the night, and raviſheth a woman there, this is no burglary; for, ſaith he, raviſhment is no felony by the Common Law, as burglary is, although it bee felony at this day by the ſtatute: But it may ſeeme by M. *Bracton*, *Glanvill*, and *Stamford*, that by the ancient Common Law it was felony. The words of M. *Bracton lib.* 2. are thus, *Olim quidem corruptores virginitatis & caſtitatis ſuſpendebantur, &c. moderniſ tamen temporibus aliter obſervatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelſtanus; raptus mulierũ ne fiat, defendit tam lex humana quã divina: Et ſic fuit antiquitùs obſervatũ, quod ſi quis obviaverit ſolã, cum pace dimitat eam, &c. Si autem contra voluntatem ſuã, &c. jactat eam ad terram, ſeriò facit gratiã ſuã, &c. Quod ſi concubuerit cum ea de vita & membris ſuis incurrat damnum, &c.* And with this M. *Glanvil* alſo agreeth, *fol.* 112. & *Co. L. Sect.* 190. Note that the words, *de vita & membris ſuis incurrat damnum*, do imply the offence to have been felony of death. *Br. Cor.* 204 *Vide Co. L.* 391.

Bract,21, 122,23

Felony

Alſo amongſt the Lawes of S. *Edmund*, ſometimes King of this Realme, you ſhall find this Law, *Qui cum Nunna vel ſanctimoniali fornicetur, emendetur ſicut homicida* § *A multo fortiori*, then, ſaith M. *Stamford*, ſhall he be puniſhed, if he had raviſhed her. So as Rape, at the firſt, ſaith *Stamford*, was grievouſly puniſhed, untill the time of King *Ed.* the firſt, who ſeemed to mitigate the paine thereof by the ſtatute of Weſtminſter, 1. *ca.* 13. which gaue two yeares impriſonment and fine: but ſpying the miſchiefes enſuing upon the ſaid Law, at his next Parliament holden at Weſtminſter, called Weſtm. 2. *cap.* 34. he made the offence of Rape to be felony againe: *Br. Coron.* 204.

Weſt,2,34 9,Rape 1

Note alſo by *Britton*, *fo.* 17. it is not Burglary in an infant under 14. yeares of age, nor in poore perſons that upon hunger ſhall enter a houſe

Comp,23 See Pl,19

for victuall under the value of twelve pence, nor in naturall fooles, or other perſons that be *non compos mentis*; but for poore entring for victuall, at this day it is felony in them.

Nec ſi pur conſervation de vie, home emble viands de ſatisfie ſon preſent hunger, ceo neſt felony, nec Larceny. Car Neceſſitas inducit privilegium quoad jura privata. Stamf. Sir *Fr.Ba.* 29.

And as for infants, ſee *hic cap.* 95. & 104.

Theft. CHAP. 100.

THeft is the fraudulent taking away of another mans goods, with an intent to ſteale them, againſt (or without) the will of him whoſe goods they be: And this is of two ſorts, Robbery, and Larceny.

Robbery.

RObbery (in Latin called *Rapina*) is properly the felonious taking of any thing from the perſon of another, againſt his will, by aſſault in the high way, and putting him in feare thereby: and here although the thing taken, be but to the value of a halfe penny, yet it is felony, for which the offender ſhall ſuffer death, without benefit of Clergy. Dyer 314. Stamf. 17. Finch.

As if one by the high way aſſaulteth me, and taketh away my purſe, mony, or other goods.

But if a thiefe aſſaulteth me and rob me, and biddeth mee deliver my purſe, but taketh nothing from me (in regard that I being too good for him, ſhall apprehend him, or ſhall levy huy and cry, whereby he is taken) this is taken to bee no robbery nor felony at this day: for although intent may make a man guilty of Treaſon (as you may ſee here before, title *Treaſon*;) yet in caſe of felony there muſt be an execution of that which was formerly intended, and reſolved to bee done, *viz.* to kill the party, or to ſteale or take away the thing, &c. And therefore in M. *Plo. fol.* 259. *b. Walſhe* (Serjeant) ſaith, *Que intent de faire tort, ſans le act fait, neſt puniſhable in nr'e Ley, Nec le Reſolution, &c. mez le feſans del act eſt le ſole point que noſtre Ley reſpect.* 9.H.4.21. Stamf. 17.

And yet the aſſault (yea to lie in wait) only to rob me, hath been in former times holden to be felony, as appeareth by the books 27. *Aſſ. p.* 38. & 13. *H.*4. 7. 25. *E.*3 42. *Fit.Cor.* 132. & 267. *Br. Coron.* 106. 215. Stamf. 17.

And ſo the intent to commit burglary (or murder) hath been holden to be felony; for the will was reputed for the deed. *Vi.* 27. *Aſſ.* 38. *Fit.Cor.* 383 & *Stamf. fol.* 17. *a.* but the Law is otherwiſe at this day. 20. El. Cromp. 34.

In this former deſcription of robbery, the word (taking) is largely to be extended againſt the offender; ſo that although the thiefe taketh nothing from my perſon, yet if he aſſaulteth me, and upon his aſſault he threatneth to kill me, if I deliver him not my purſe, and thereupon I caſt my purſe down, and he taketh it away, this is robbery.

So if one draweth his ſword upon me, and biddeth me deliver my purſe, and I refuſe, and after he prayeth me to give him a penny, and I do ſo: yet it ſeemeth this is robbery; for by the aſſault I was put in feare, and out of that feare I gave him this mony to be rid of him. Cromp 34

So

Crom. 34. So if a thiefe do onely aſſault me to rob mee, and I deliuer him my purſe with mine owne hand, yet this is robberie, in regard this fact of mine proceedeth from feare, or by his menacing, &c.

Stamf. 37. c. So in flying from the thiefe, I caſt my purſe into a buſh, to ſaue it, and the thiefe ſeeth me, and taketh it away, this is robberie; for in this caſe had they not put me in feare, I ſhould not haue caſt my monie from me.

Cromp. 35 So if one aſſaults me to rob me, and I flying away from him, my hat falleth off, and the thiefe taketh it up, and carrieth it away, this is robberie.

So if a thiefe comes and biddeth me deliuer my purſe (without drawing any weapon, or other force uſed) and I deliver him my purſe, and hee finding but two ſhillings therein, delivereth it mee all againe, yet this is robberie.

10. El. Cromp. 34.

So if theeues do take a man, and by threats compell him to ſweare to bring them monie to ſuch a place, (at another time) or elſe that they will kill him, by force whereof he bringeth them the monie accordingly, this is robberie. *Term. Paſch. 36. Eli.* it was adjudged accordingly.

44. E 3. 14. 4. H. 4. 3. Stamf. 29. f.

Cromp. 35. One came to a Fiſherman going in the high way to market with Fiſh to ſell, and deſired to buy ſome fiſh of him, and he refuſed, whereupon the other tooke away ſome of the Fiſhermans fiſhes againſt his will, and gave him more monie for them than they were worth, but the Fiſherman was thereby put in feare, whereupon the other was indicted, and arraigned at Yorke about 26. *El.* but judgement was reſpited, for that the Court doubted whether it were felonie or no.

Alſo in the former deſcription of robberie, the words, from the perſon, are not ſo nicely to be conſtrued, that (to make up robberie) the goods muſt needs be annexed to the bodie of the perſon; for in ſome caſes it may bee robberie, notwithſtanding the thiefe doth neither take the goods from the perſon of the owner, nor yet aſſault him.

Stamf. 27. Lamb. 365. As if in my preſence a felon taketh away my goods openly againſt my will, this is robberie, though he neither taketh them from my perſon, nor aſſaulteth me; for the loſſe is the ſame, and the feare alike as though it had beene from my perſon.

P. R. 131. And if one or more do take an horſe out of my paſture, or driue my cattell out of my ground, I ſtanding by, and looking on at the ſame time, this is robberie, if ſo be that the felon doth either make an aſſault upon me, or do put me in feare.

Note to make it robberie, the perſon muſt be put in feare; for if a felon do take monie from me in the high way, and ſhall not put me in feare, this is no robberie. *Lam. 266. Crom. 35. P. R. 131.*

Dyer 2. 24. And you ſhall finde a caſe in my Lord *Dyer*, how a felon did take monie to the value of 40. s. or aboue, from the perſon of another in the high-way, and yet for that he did not put his perſon in feare, by aſſault and violence, this was holden no robberie, and the offendor was allowed his Clergie for the ſame felonie, *anno* 5 *El. Finch libro* 2.

Cromp. 34. Note alſo, if two theeues ſhall attempt to robbe mee, and I flie from them, and one of the theeves follow mee, and the other eſpying another true man (but out of the ſight of his fellow) rides towards him, and robbed him, this was adjudged robberie in both the theeves; and yet

the one was neither in sight, or knowing of this robbery; but because they both came to rob, and at the same time, this fact committed by the one shall be imputed to the other also: it was one *Pudseys* case. 28. *El.*

Cut-purse. If one shall cut my purse, or take or picke my purse out of my pocket secretly, or priuily and fraudulently, it is felony of death without benefit of Clergie, if it be aboue (or to) the value of xii. d. *Quare* if it be under xii. d. because it is taken from the person of a man, and the forme of the Indictments are *insultum fecit* 8. *Eliz. c.* 4. Also the words of the statute (8. *Eli.*) are, That no person taking any money, or goods (generally) from the person of another, &c. shall haue his Clergy: and yet by the opinions of M. *Lamb.* and M. *Cromp.* this is no felony of death, but petie Larceny, for which the offendor is not to haue judgement of death, and therefore needeth not his Clergy. 8. El. 4. P. Cler. 1. Lamb. 264. Cro. 34. 35. Crom. 119.

So if one shall take any money or other goods from my person, secretly without my knowledge, or by sleight onely, I neither being made afraid, nor witting of it (if it be aboue (or to) xii. d. in value) it is felony of death. P. Clerg. 2. Lamb. 264.

A man cutting my girdle priuily, my purse hanging thereat, and the purse and girdle falleth to the ground, but he did not take them up (for that hee was espied) this is no felony; for that the Thiefe neuer had an actuall possession thereof, seuered from my person: But if he had holden the purse in his hand, and then cut the girdle (although it had fallen to the ground, and that he tooke it up no more) then had it beene felony (if there had beene aboue (or but) xii. d. in the purse) for he had it once in his possession: But these secret and priuie takings from my person, are no robbery, for he neither assaulted me, nor put me in any feare. *Dyer* 224. 26. El. Crom. 35.

And in ancient time the offendor onely lost his right thumbe. See *Fitz. Cor.* 434.

Larcenie. CHAP. 101.

LArceny (being fetched from the Latine word *Latrocinium*) is properly a fraudulent and felonious taking away of another mans personal goods in the absence of the owner, and without his knowledge.

M. *Finch* (*tit. Felonies*) saith, that Larceny is the secret taking of the goods of another, aboue the value of xii. d. without pretence of title.

This is of two sorts, *Grand* Larceny, and *Petie* Larceny.

Grand Larceny. Grand Larceny, is when the goods stolne be aboue the value of xii. d. and this is felony of death, *sc.* wherein iudgement of death shall be giuen upon the offendor, except he be saued by his booke.

And yet if the goods stolne be to the value of x. s. if the Iury that passeth upon his arraignment, shall finde that the goods did not exceed the value of xii. d. then that offence shall be taken but for petie Larceny. F. Cor. 451.

Petit Larceny. Pety Larceny is when the goods stolne do not exceed the value of xii d. and for this the offender shall bee imprisoned for some certaine time, and after shall bee whipped, or otherwise punished by the discretion of the Iustices before whom hee is arraigned; but it is not felony of death. And yet by good opinions, the stealing of goods to the value only of twelve pence, is felony of death. See *Fitz. Cor.* 178. *& Br. Coron.* 84. 85. *& ferf.* 1. *Dalt. & Stud.* 17. And so Sir *Robert Heath* delivered it at Cambridge West. 1. c. 15. Br. Cor. 84. & 85. Stam. 24.

bridge Aſſiſes 1631.

Yet may not the Iuſtice of peace, before whom ſuch an offendor ſhall be brought (out of the Seſſions) puniſh by his diſcretion the ſaid offendor for petty Larceny, and ſo let him go, but muſt commit him to priſon, or baile him, to the intent he may come to his triall, as in caſe of other felonies; and if upon his triall the Iury ſhall finde the goods ſtollen, to exceed or to be but xii. d. in value, the offendor ſhall have judgement to dye for the ſame.

But if the indictment be laid xx. d. and the offendor arraigned thereof, yet upon his triall if the Iury ſhall finde the goods to be but of the value of x. d. here the offendor ſhall haue iudgement but as for petie Larceny. 42. *E.* 3. *Abr. d'Aſſ.* 70.

17. H. 8. 12. 1. Cor. 218. Br. Cor 2. 34. 38. & 219. Alſo, although petie Larceny be not felony of death, nor puniſhable by death, yet it is a felonious act and a felonious taking; for the indictment of petie Larceny muſt be *Felonice cepit*: and he ſhall forfeit all his goods and chattels for ſuch a felony: and there is no difference either in the nature of the offence, or in the minde of the offendor, but onely in the value of the thing ſtolne, which alſo maketh the difference of puniſhment.

And yet by ſome late opinions, pety Larceny is but in the nature of a treſpaſſe, and then, where the Principall is convicted but of petie Larceny, there can be no Acceſſaries; and the procurers, or receiuers knowing of the goods to be ſtolen, are not to be deale withall as for felony; But to be ſent to the houſe of Correction, or to receiue ſome other puniſhment by the diſcretion of the Iuſtices at the Quarter Seſſions. *Quare inde.*

1. Cor. 415. tranſ. 24. Cromp. 36. c. If one ſhall ſteale goods to the value of 4. d. at one time, and 6. d. at another time, and of 3. d. at another time, which together do exceed the value of xii. d. and that theſe ſeuerall goods be all ſtolne from one and the ſame perſon, then may they be put together in one Indictment, and the offendor being thereupon arraigned and found guilty, ſhall haue iudgement of death therefore.

1. Cor. 404. tranſ. 24. 1. Againe if two, or moe together do ſteale goods aboue the value of xii. d. this is felony of death in them all, for the felony in them is ſeueral, though the ſtealing be ioyntly done.

New firſt for the manner. CHAP. 102.

IN Larceny, two things muſt concurre, *ſc.* to take, and to carry away; or to remoue the thing taken with a purpoſe to ſteale the ſame; for the Indictment muſt be, *Cepit & aſportavit*, or *cepit & abduxit*; and yet in theſe words, the letter is ſo much not to be inſiſted upon, as the meaning, and that for the better ſuppreſſing of offendors in this kinde. *The matter.*

For although by the Law in M. *Glanvils* time *à furto omnimodo excuſatur qui initium habuerit ſuæ detentionis per dominum illius rei*; yet at this day it may be felony, though the offendor take not the thing, but comes firſt unto it by deliuerie from the owners owne hand, and ſo commeth lawfully to the poſſeſſion. *Delivery.*

As,

12. 4. 9. tranſ. 25. If a Taverner do ſet a peece of plate before his gueſt to drinke in, and

and the gueſt carrieth it away, this is felony; for the Taverner gave him no poſſeſſion thereof, but onely the uſe to drinke in it for the time.

If I deliver goods to a Carrier (or other perſon) and bargaine with him to carrie them to a certaine place appointed, if hee carrieth them to the place, and then conveyeth them away fraudulently, this is felony; for the privitie of bailement was determined when they came at the place appointed. *Ibid.*

So if the Carrier ſhall take out parcell of the goods, this is felonie. *Ibidem.*

Alſo if the Carrier ſhall carrie them to another place, and there breaketh them up, and converteth part, or all, to his owne uſe, this is felony. *Ibidem.*

But if the Carrier ſhall ſell, or give away, or otherwiſe imbeſill the whole, as he receiued them, this is holden to be no felony, becauſe it was deliuered him. *Stamf.* 25. *a.* *Crom.* 36. *a.*

And yet in this laſt caſe there is beſides the deliverie, a bargaine and agreement to carry the goods, and the delivery was onely to that intent, ſo that the property of thoſe goods did alwayes remaine in the firſt owner. *Ideo quare.*

But if *A.* lendeth his horſe to *B.* being a ſtranger, who rideth quite away with the horſe, this is no felonie in *B.* by reaſon of the deliverie. And ſo did Sir *Iohn Dodderidge* Knight, give direction at Cambridge Aſſiſes, 1617. upon an indictment of felonie preferred in ſuch a caſe; *quare* if the horſe had beene delivered to a ſervant, who rideth away therewith. *Vide poſtea ſub hoc tit.*

If a Clothier ſhall deliver any wooll or yarne to his Carder, Spinſter, or Weaver, &c. to dreſſe, and they ſhall convey away, imbeſill, or ſell any part thereof, this ſeemeth to be no felonie, by reaſon of the deliverie, but they ſhall be puniſhed by the diſcretion of two Iuſtices of peace, by whipping, or ſtocking, &c. *Vide antea tit. Cloth.* 7. Iac. cap. 7

So if I deliver my goods to another to keepe, and he fraudulently conſumeth them, or otherwiſe converteth them to his owne profit, this is no felonie, becauſe of the deliverie. 13 E. 4. 9

And ſo (it ſeemeth) if I deliver money or goods to *A.* to deliver to *B.* and *A.* flieth away with them, conſumeth them, or converteth them to his owne uſe, this is no felonie, by reaſon of the deliverie.

Servants. If a man delivers money to his ſervant to keepe, or plate to his butler, or veſſell to his Cooke, or horſe to his Horſe-keeper, or ſheepe to his ſheepheard, and ſuch ſervant doth go away with them, this is felonie by the Common Law in that ſervant (for theſe goods were alwayes in the maſters poſſeſſion, and kept and uſed by the ſervant to the maſters behooſe.) But yet there was much difference in opinions herein; for the clearing whereof in ſome part, the ſtatute 21. *H.* 8. *cap.* 7. (which was made perpetuall by the ſtatute 5. *El. c.* 10.) provided, that all and ſingular ſervants of the age of 18. yeares, other than an apprentice, (which muſt bee underſtood of ſuch as bee bound by Indenture, and by the name of an Apprentice) to whom any money, goods, or chattels, &c. by his or their maſter or miſtreſſe ſhall bee deliuered to keepe, of the value of xl. s. 21 H. 6. 11. 11. E. 4. 11. 3. H. 7. 11. 21. H. 7. 13. 21 H. 8. 7. P. Felon. 5 H. 7. Br. pr. tie 24. Crom.

Apprentices & ſervants under eighteen ſhall be in caſe as they were before the making of his Statute.

xl. s. or above, if ſuch ſervant ſhall goe away with, or ſhall imbeſill, or ſhall convert to his owne uſe, any ſuch money, goods, or chatels of the ſaid value, to the intent to ſteale the ſame, or to defraud his maſter or miſtreſſe thereof, it ſhall be felonie: but this muſt be proſecuted within one yeare after the offence.

And now upon the conſtruction of this ſtatute of 21 *Hen.* 8. divers new queſtions and caſes have ſince aroſe: As,

Dyer 5. If a man deliver an obligation to his ſervant, to goe and receive the money thereupon due, and the ſervant receiveth the money, and then goeth away therewith, or doth convert it to his owne uſe, this is holden to bee no felonie within the meaning of this ſtatute, for the maſter did not deliver the money to his ſervant.

Ibid. Dyer 5. So if a man delivers to his ſervant wares or cattell to ſell at a Faire or Market, and hee ſelleth them there, and receiveth the money; and then goeth away with the money, or converteth it to his owne uſe, this is no felonie within this ſtatute, for hee had not the money by his maſters deliverie; neither went hee away with the goods of his maſter delivered him.

28 El. Cromp. 35. But if the ſervant receiued of his maſter 20 li. in gold to keep, which hee changed into ſilver, and then ran away with that, this is felony, for that gold and ſilver are both of the ſame nature, *ſc.* money.

21 H. 7. 15. And if a man delivers to his ſervant a horſe to ride to market, or money to carry to a faire, or to buy cattell, or other things, or to pay to another man, and the ſervant goeth away therewith, this was no felony by the common law, by reaſon of the delivery thereof to him by his maſter: but *quere* if it be not felony by this Statute, for that hee went away with the thing delivered him.

If the goods delivered to the ſervant to keepe, be under the value of forty ſhillings, and the ſervant goeth away therewith, this is holden to be no felony at this day (*mez. tantum an breach del truſt que le Mr. repoſe in ſon ſervant.*) But if the ſervant ſhall imbeſill, or goe away with any goods of his maſters, which were not delivered to him, this is felony, although they bee under the value of forty ſhillings, &c.

If a man appoints his ſervant to take and carry Corne to market, and to take his horſe to carry the ſame upon, and the ſervant goeth away with the Corne, or horſe, this is felony in the ſervant, if the goods hee ſo goeth away with be all to the value of forty ſhillings.

But if the ſeruant waſtfully conſumeth the goods, and returneth againe to his maſter, this is no felony. And theſe were the directions of Sir *Nicholas Hide* to a Iurie of Life and death, upon the arraignement of a ſeruant in ſuch a caſe, at Cambridge Lent Aſſiſes, *Anno* 2. *Caroli Regis.*

Dyer 5. And if one of my ſeruants doth deliuer to another of my ſeruants goods of mine (to the value of xl. s.) and he doth goe away therewith, or converteth them to his owne uſe, this is felony within this ſtatute, for this ſhall be ſaid my deliuery.

5 H. 7. 16. Br. properties 23. Cromp. 50. If a man deliuers to his ſeruant a piece of cloath to keepe, and the ſeruant maketh himſelfe a garment thereof, and after goeth away therewith

with, this is felony (within this ſtatute) for that the property is not altered by the making a garment thereof, becauſe the cloth may bee knowne ſtill. Otherwiſe is it of barly turned into mault, or of mony melted and turned into a wedge or peece of metall, or the like, for that in theſe caſes the barly, or mony cannot bee knowne againe, but are altered in their nature and kinde: but *quere*, and ſee the words of the ſtatute.

If a man delivers goods to one to keep, and after receives the ſame perſon into his ſervice, who after goeth away with thoſe goods, this is no felony by the ſtat. of 21. *H* 8. becauſe he was no ſervant at the time the goods were delivered to him. *Vide* Sir *Fr. Ba.* 39. 40.

If I deliver goods to the ſervant of *A.* to keep, and after I die, and make *A.* mine Executor, and before any new commandement of *A.* to his ſervant for the cuſtody of the ſame goods, his ſervant goeth away with them, this is out of the ſtatute of 21. *H.* 8. *Ibid.*

If my Receiver of my rents receive ten pounds of my Tenants, and run away therewith, it is no felony; for the ſtatute is, where the maſter delivereth to keep, &c. Cromp. 50

If a man delivers to his ſervant the key of the chamber doore, and the ſervant taketh away his maſters goods in the chamber, (above the value of twelve pence) this is felony at the Common Law, for the goods were not delivered. 13. E. 49

A man laid and hid a purſe of mony in his corne mow within his barne, and after his ſervant finding the ſame, tooke part of the mony out of the purſe, &c. and the ſervant was therefore indicted and arraigned of felony at Cambridge Sommer Aſſiſes, *Ann. Dom.* 1621. before Sir *John Dodderidge.*

If an Apprentice, or ſervant under the age of 18 yeeres, ſhall imbeaſell their maſters goods, which were not delivered to them, nor committed to their charge, if the goods ſo imbeaſelled be to the value of twelve pence, or above, it is felony. But if the goods bee under that value, it ſeemes ſuch Apprentice, or ſervant, may bee ſent to the houſe of Correction. *Vide hic cap.* 31.

Another felony there is by the ſtatute 33. *H.* 6. *cap.* 1. in the ſervant that ſhall take away or ſpoile the goods of their deceaſed maſter: but this felony groweth upon their default of appearance in the Kings Bench, after Proclamation; and therefore neither the triall nor hearing thereof belongeth to the Juſtices of peace, becauſe they cannot well take knowledge of ſuch default in the Kings Bench. P. Felon 11 P. Exon. 51

The ſecond thing which muſt concurre (in Larceny) to make it felony, is the carrying away of the thing ſo taken; and yet it is not of neceſſity that it be cleane carried out of the houſe, or place where it was, but it ſufficeth that it bee ſo farre removed, that the evill and felonious intent of the taker may plainly appeare; As,

If a gueſt will felonioully take the ſheetes, or other goods of the Inkeepers, out of the chamber where hee lodgeth, and then (going to the ſtable for his horſe) is taken with them, or they bee found in ſome other roome of the houſe where hee had laid them; it is felony in both caſes, 27 Aſſ. 19 See Stamf. 26 b Br. Cor. 109

although

although the poſſeſſion of thoſe goods continued in the owner.

So is it if one taketh a Horſe in another mans Cloſe, with an intent to ſteale him, and he be apprehended before he hath gotten the Horſe out of the ſame Cloſe, this is felony. *Lamb.* 277. *& Cromp.* 36. *a.*

Next, of what things Larceny may be committed, and of what not. CHAP. 103.

NOte, that the felonious taking of any thing, whereof another hath property, is felony. 22. *H.* 6. *Br. Coron.* 190.

And therefore Larceny may be committed by taking of any the moveable goods of any perſon, as mony, plate, apparrell, houſhold ſtuffe, or corn, hay, trees, or fruit, (that are ſevered from the ground) or the like, the ſtealing of them is felony. *Moveable goods.*

It is alſo felony to ſteale any horſes, mares, colts, oxen, kine, ſheepe, lambes, ſwine, pigges, hennes, or geeſe, ducks, turkies, peacocks, and other domeſticall beaſts or birds of tame nature. 18. *H.* 8. 2. For the nature of theſe things, being tame (and not ſavage) if they ſhall run or fly away, though out of the ſight of the owner, yet in what place ſoever they bee found, they ceaſe not to be his, ſo as whoſoever detaineth them from the owner, is puniſhable by way of action. *Domeſticall*

It is felony alſo to take ſome things that be of wilde nature; as to take yong pigeons which cannot fly, out of another mans Dove-houſe or other houſe; ſo to take yong Hawkes, or yong Herons, out of their neſts (or ayries) and breeding in a Park, or other ſeverall ground; ſo to take fiſhes that bee kept in a trunk, or ſeverall pond; for that the property of ſuch things ſhall be alwayes adjudged in the owner of the Dove-houſe, ground, trunk, or pond, in as much as ſuch things cannot (of themſelves) go or get out thereof, but that the owner of ſuch Dove-houſe, ground, or pond, may take them at all times at his pleaſure. 10. *E.* 4. 17. *a. Bingham. &* 18. *E.* 4. *fol.* 8. *a.* *Wilde.*

Fitz. 26. 1. Stamf. 25. c. 2. E. 4. fo. 8.

So of old doves taken in the dovecoat (in the night time eſpecially:) and ſo it ſeemeth of any other wilde beaſt or fowle (being of value) and taken within a mans houſe.

b. Cro. 92. 12 Ass. 95. Kel. 29. b. 30. b. Stil. 2. a. b. Kel. 47. 2.

At Cambridge Sommer Aſſiſes *Ann.* 1627. there were two indicted and arraigned of felony, before Sir *Francis Harvy*, for taking fiſh out of a Net lying in the River, being the ſeverall fiſhing of Sir *Ed. P.*

Alſo it is felony to take any Swans that be lawfully marked, though they be at large; for a man hath property in ſuch: See *Co. lib.* 7. *fol.* 16. *b.* 17. *a. quare* if they be flying Swans, and not pinioned.

Alſo for Swans unmarked, if they be domeſticall or tame, *ſc.* kept in a moat, or in ponds neere to a dwelling houſe, and ſo be *Domni* or *Manni aſſueta*, to ſteale ſuch is felony. See *Co.* 7. 17. *b. hic poſtea.*

So it ſeemeth of Swans unmarked, ſo long as they keepe within a mans Mannor, or within his private Rivers: or if they happen to eſcape out of a mans Mannor, or private Rivers, yet if they ſhall bee purſued and taken

taken and brought in againe. See *Co.7.17.16 b.*

But if Swans that be unmarked, ſhall be abroad, and ſhall attaine to their naturall libertie, then the propertie of them is loſt, and ſo long felony cannot be committed by taking of them.

And yet ſuch unmarked and wild Swans, the Kings officer may ſeiſe them (being abroad) for and to the uſe of the King, by his Prerogative, they being *Volatilia Regalia:* alſo the King may grant them; and by conſequence, another man may preſcribe to have them within a certaine precinct or place; for it may be intended to have a lawfull beginning by the Kings Grant. *Co.lib.7.f. 16.a b. & 18.a.b.*

Alſo yong Swans, or Cygnets, they do belong to both the owners in common equally, *ſc.* to the owner of the old Cock, and to the owner of the old Hen, and the Cygnets or yong Swans ſhall be divided between them, *Co.7.17.* And to ſteale ſuch Cygnets, is felony, for they ſhall bee of the ſame nature with the old Cock or Hen.

Alſo it is felony to take a tame Deere which is marked, and domeſticall, especially if the taker knowes it to bee tame and domeſticall; or that it weareth a Bell. 10.E.4.15. Stam.25.

If a Hart, Bull, or other beaſt, which hath been wild by nature, and made tame, and hath at his neck a little coller of leather, or any other notorious ſigne, and he doth go abroad, and returneth againe to the houſe (of his maſter or owner) at his pleaſure, if he be taken by a ſtranger and killed by night, or in other ſecret manner, this is felony by the Common Law. *Crompt Author des courts 167.*

But by the Common Law, Larceny cannot be committed by taking of ſavage or wilde beaſts, fowles, or fiſh, found in their wilderneſſe and abroad, or at large; as Deere, Conies, Hawks, Doves, Phelants, Partriges, Herons, Swans unmarked, or fiſh that are at liberty, &c. for no perſon can claime property in them. *Fitz.87.a.Fi.45.*

By the ſtatute, *De Foreſta cap. 10. Nullus de cetero amittat vitam vel membrum, pro venatione noſtra, (ſc. pur tuer Deare le Roy)* which branch is but an affirmance of the Common Law. *Crompt. Author des courts 166.*

Howbeit by Statute it is now made felony to hunt Deere, or Conies, (after ſome ſort) in a Forreſt, Park or Warren; or to take a tame beaſt or other thing in a Park, by manner of robbery. See the ſtatute made 3. *Ed.* 1. 20. *& 1. H. 7.c.7. Vide preſtea Felony by ſtatute, tit. Hunting.* P.Felon.49. Lamb.378.

Alſo by ſtatute it is felony to ſteale, take away, or conceale a Hawk, *Ibidem.* P.Felon.

But for the better underſtanding what the Law is, in things that bee *feræ Naturæ*, obſerve theſe differences. Co.7.17b. Fo.45.

Property. In ſome things that be *feræ Naturæ*, a man hath a right and property, and in ſome of them a right of priviledge.

There be three manner of rights of property, *ſc.*

1 Abſolute. This property a man cannot have in any thing which is *feræ Naturæ*, but onely in ſuch things as are *domitæ Naturæ.* Ibid.

2 Qualified. } These properties a man may have in things *feræ Naturæ*; and to ſuch properties a man may attaine by two meanes, *ſc.*

3 Poſſeſſory. }

1 By

1 By induſtry: and this may be either by taking them onely, (and yet ſuch things be his no longer than they be and remaine in his poſſeſſion or cuſtody;) or by making them tame (*ſc. manſueta, id eſt, manui aſſueta*, or *domeſtica, id eſt, domui aſſueta:*) But in theſe laſt a man alſo hath but a qualified property, *ſc.* ſo long as they remaine in his poſſeſſion, and ſo long Felony may be committed by taking of them away, but if they attain to their naturall libertie, and have not *animum revertendi*, then the property of them is loſt.

2 *Ratione impotentiæ, & loci:* As where a man hath yong Goſhawks, or herons, or the like, which are *feræ Naturæ*, and do breed (or ayre) in his ground, he hath a poſſeſſory propertie in them: ſo as if one takes them when they cannot flie, the owner of the ſoile may have an action of treſpaſſe. *Quare boſcum ſuum fregit, & tres pullos eſperverum ſuorum*, or *ardearum ſuarum, precii tantum unper in eodem boſco nidificantem cepit & aſportavit:* And to take theſe away is Felonie as is aforeſaid. 18. *E.* 4 *fol.* 8 *Stamf.* 25. *ſ. Fitz.* 86. *l. &* 89. *k.*

Alſo note, that my hawke which is flying at a fowle, and my deere that is chaſed out of my Parke, ſo long as my ſervant or keeper maketh freſh ſuite after them, they ſtill remaine in my poſſeſſion, and the propertie is ſtill in mee: But if they ſtray, it is lawfull for any man to take them. *Fi.* 45.

But when a man hath beaſts or fowls (that be ſavage, and in their wildeneſſe) *Ratione privilegii, ſc.* by reaſon of a Parke or warren, &c. (as Deere, Hares, Conies, Pheſants, or Partridges, or the like, which bee things of Warren) he hath no propertie in them: And therefore in an action *Quare Parcum*, or *Warrenam, &c. fregit & intravit, & 3. damas, leporei, cuniculos, Phaſianes, perdices, &c. ibidem invenit, cepit & aſportavit*, he ſhall not ſay, *ſuos*, for that he hath no propertie in them, but they belong unto him *Ratione Privilegii* (for his game and pleaſure) ſo long as they remaine in the place priviledged. And if the owner of the Parke dye, his heire ſhall have them, and not his executor or adminiſtrators; for that without them the Parke (which is an inheritance) is not complete; neither can felonie be committed by taking of them, *Fit.* 86. *m.*

Neither can larceny be committed by taking of Dogges of any kinde, Apes, Parats, Squirrils, ſinging Birds, or ſuch like thing (kept onely for pleaſure, and not for any profit) though they bee in the houſe, and made tame.

No not by taking a Bloud-hound or Maſtiffe, although there is good uſe of them, and that a man may bee ſaid to have a propertie in them, ſo as an action of treſpaſſe lyeth for taking them; yet in regard they are things of ſo baſe a nature, no felony can be committed by taking them.

But yet to take a Dog of any kinde, or other thing of pleaſure, from the perſon of another, or out of the poſſeſſion of another, and in his preſence, if it be done with force or violence, it amounteth to a breach of the peace. And if it bee done with force, and by the number of three perſons, or moe, it will amount to a Riot, as it ſeemeth.

Alſo it is felony to ſteale the fleſh of any tame, or wilde fowle, or of any Deere, or other beaſt, that is dead, out of the poſſeſſion of another man.

So is it to pull the wooll from the ſheeps backe, or to kill them, and to

take the skinne, and leave the bodie behinde.

But note, that in all these cases of felony aforesaid, the thing so taken or stollen must exceed the value of 12. d. also it must be of a thing personall and not reall. Cromp. 38

Things real For the taking of any reall chattell, or thing, is no Felony: as,

If one cuts downe my tree, or my corne, and carrieth it away, or pulleth and stealeth my apples hanging on the tree, and carrieth them away, these are no Felony, for these things bee part of my free-hold till they bee severed. Stamf. 25. 10 E. 4. 7. Co. 4. 19

But if I gather mine apples, or cut downe a tree, or corne of mine owne, then it is felony if another shall carry them away feloniously.

And by the opinion of *Mar.* if a stranger cuts downe my tree, or corne without title, and another time after he fetcheth it away, that will prove felonie, because it was a chattell severed when he tooke it. See 12. *Ass. p.* 32. *Br. Coron.* 76. Stamf. 25. Lamb. 271. Cromp. 38

Also to take lead from off a house, or Church, will not amount to felony, for it is parcell of the house or freehold.

Also to take away the evidences of a mans land, or an Indenture of lease, or any obligation, deed, specialtie, or other writings, (be they in or without a box) it is no Felony, because they cannot be valued; and againe, because they concerne inheritance, chattels reals, or things in action: yet if they bee in a box unsealed, it seemeth that the taking of the box feloniously, is Larceny; but if the box be sealed, and have writings within it, the box shall bee of the same nature as the writings that bee therein. 10. *E.* 4. *fol.* 16. Cromp. 37. Stamf. 25. Lamb. 271. 10. Ed. 46. Br. Cor. 151. Co. 8. 33

So to take away an Infant in Ward, is no Felony. Stamf. 25

The owner unknown. Also the taking and carrying away of such things whereof the owner is unknowne, in some cases is no Felony: as the taking away of treasure that was hidden or lost (be it money, bullion, or plate) or of wrecke of the Sea, or goods that be waived, or strayes (before they be lawfully seised, &c.) it is no felony; but the takers away of such treasure, wrecke, and waife, shall be punished by fine and imprisonment. 22. *Ass. p.* 99. *Br. Coron.* 96. *Fit. Coron.* 187. & 265. Stamf. 25. Pr. Cor. 139. 265. Br. Cor. 136

And yet where the goods be *bona cuiusdam hominis, ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona parochianorum*, or the goods of a Church, or Chappell (as bells, books, chalices, surplices, bell-rops, &c.) or the goods of any Corporation in time of vacation, in these cases there bee owners of them to some purpose, and therefore it is Felony to steale such goods. *Vide Cro.* 25. Dyer 99. Lamb. 272. 80 476. 476. 7. Ed. 4. 14. 15. Br. Indictment. 11.

One *Nottingham* digged a dead body out of his grave, and tooke away his winding sheet, this was holden to be no Felony, but punishable as a misdemeanour, and the offendor was adiudged to be whipped, &c. for it: this was at Cambridge Sommer Assises, *Anno* 1617.

His owne goods. Note also, that a man may commit Felony, by taking his owne goods; as,

If *A.* do lend or deliver goods to *B.* to keepe, and after *A.* doth take them away feloniously, or privily and fraudulently (to the intent to charge *B.* or to recover damages for the same against *B.* by an action of *Detinue*) this is Felonie in *A.* and yet the property of the goods were in him 7. H. 6. 43. 5. H. 7. 2. Stamf. 26.

him: yet M. *Brooke, Coron.* 142. maketh a *quare* thereof.

Mar. lect. 12 Crompt. 37. But if I lend my plate, or deliver my goods to another to keepe, and hee melteth my plate, or changeth the fashion of my goods; now if I should take that mettall, or those goods feloniously, it were felony in mee, because the propertie is altered by altering of the fashion. See a little before.

If the party robbed taketh his goods againe from the thiefe, and suffereth him to escape. *Vide postea tit. Accessories.*

Crompt. 37 Fitz. Cor. 19 A man findeth my purse in the high way, and being asked thereof, denyeth it, this seemeth to be no felony, for hee came not thereby at the first feloniously: But by the Leviticall Law hee was to restore the thing found, with an addition of the fift part more thereto. *Leviticus 6.3.5. Numbers 5.7.*

A man hath two chaines, the one of gold, the other of copper, and hee selleth the gold chaine, and delivereth it, and presently after he secretly conveyes away his gold chaine, and puts the copper chaine in the place thereof; this is felony. *Lectur. Mr. Cocke.*

So if one taketh away my horse, and leaveth another of his (which is like unto mine) in stead thereof, this is felony, *ibidem.*

Crompt. 37. Kitch. 54 A man commeth to my wife, or to my servant with a false message, token, or letter made in my name, and thereby getteth my goods, yet this is no felony, but it shall be punished by the statute of 33 *H.* 8. *cap.* 1 See *antea tit. Counterfeiters.*

What persons are chargeable in Larceny. CHAP. 104.

7 Ass. 40 Stamf. 26 Fitz. Cor. 160 A *Feme* covert doth steale goods by the compulsion or constraint of her husband, this is no felony in her. *F. Coron.* 160. *& Fitz. Coron.* 199. *Br. Coron.* 108. For where the words of the Law are broken by compulsion, there the Law is not offended, neither shall any person be damnified for doing a thing whereto he is inforced or compelled, but such compulsion shall be a good excuse in our Law. *Pl.* 19. *a.b.* *Wife.*

Mar. Lect. 12 But yet if by the compulsion of her husband, she committeth murder, this is felony in them both.

7 Ass. 40 Stamf. 26. Fitz. 27 If a *feme* covert doth steale goods by the commandement or procurement of her husband (without any constraint) this hath beene holden to be felonie in her, *sc.* that the wife in such case is a principall, and the husband but an accessary: M. *Bracton* also saith it is felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*; but M. *Stamf.* and others seeme to bee of another opinion, *Stamf.* 26. *P. R.* 130. *Br. Coron.* 108.

3 Cor. 160 Lamb. 277 If the husband and the wife joyne in committing of Treason, the necessity of obedience doth not excuse the wives offence, as it doth in Felony, because it is against the Common-wealth; for *Privilegium non valet contra Rempublicam. Ba.* 32.

But if the husband and the wife joyntly together doe steale goods, this shall bee taken to bee the onely act of the husband, and such felony shall bee imputed onely to the husband, and not to bee felony in the wife, by some opinions. *Vide Stamf.* 26 *& Lamb. Fitz. Coron.* 160. *& Ba.* 31. *et* 37.

that the wife can neither be Principall, nor Acceſſary, in regard of the ſubjection and obedience ſhe oweth to her husband.

And yet M. *Bracton* ſeemes to be of another opinion herein, ſaying, *Quid erit ſi uxor cum viro convicta fuerit, vel confeſſa fuerit quod viro ſuo conſilium præſtiterit & auxilium, nunquid tenebuntur ambo, imo ut videtur* (and a little after he ſaith) *alter eorum poteſt eſſe malus per ſe, & alter bonus, ita uterque eorum poſſit ſimul et conjunctim eſſe malus.*

And againe, *Sicut ſunt participes in crimine, ita debent eſſe participes in pœna. Ibidem.*

And M. *Bracton* ſeemeth to make this difference, that although the wife may conceale her husbands offence in caſe of felony (as alſo ſhe may relieve and keepe company with him, knowing him to be a felon) *Conſentire tamen non debet felonie viri ſui, neque eſſe coadjutrix, ſed feloniam, & nequitiã viri impedire quantum poſſit.* And accordingly at Cambridge, at Lent Aſſes, *Anno* 1619. the wife was in ſuch caſe indicted and arraigned with the husband for robbing of a windmill.

Againe, at Cambridge Lent Aſſiſes, 1620. one *William Houghton*, and *Katherine* his wife were together indicted and arraigned for ſtealing certaine apparell; and the husband and wife were indicted for the like, at Lent Aſſiſes, *Anno Dom.* 1624.

Alſo the wife is chargeable for a treſpaſſe done by her and her husband together; and therefore (howſoever) it ſhall be ſafe for the Iuſtice of Peace in ſuch caſes to commit the wife to the goale, as well as the husband.

And yet for this caſe of a treſpaſſe committed by the husband and wife, Sir *Fr. Bacon* giveth this Rule, *Excuſat aut extenuat delictum in Capitalibus quod non operatur idem in civilibus. ſc.* In capitall cauſes, *in favorem vitæ*, the Law will not puniſh in ſo high a degree, except the malice of the will, and intention appeare, *pag.* 36. 37.

But a woman covert, alone by her ſelfe (the husband not knowing thereof) may commit Larceny, and may bee either principall, or acceſſarie; as if ſhee ſteale another mans goods; or receive the thiefe that ſtealeth them; or ſhall receive ſtolne goods into her houſe, knowing them ſo to bee; or ſhall locke them up in her cheſt or chamber, her husband not knowing thereof: and in ſuch caſe if her husband ſo ſoone as hee knoweth thereof, doe forthwith forſake his houſe and her company, and and make his abode elſewhere, hee ſhall not bee charged for her offence; whereas otherwiſe the law will impute the fault to him, and not to her. *P. R.* 130. Stamf. 26. F. Cor. 13. See Stamf. 26.

Goods are delivered to the husband to keepe, and his wife ſtealeth them, it is no felony; otherwiſe is it if the husband had delivered them to a ſtranger, and then the wife had taken them felonioufly out of the poſſeſſion of the ſtranger, this had beene felony in the wife. *Mar. Laſt.* 12.

Alſo the wife ſhall not be accounted a felon, for taking or ſtealing the goods of her husband: and if the wife doe take her husbands goods, ſecretly, and delivers them to a ſtranger knowing thereof, yet this is no felony in the ſtranger. See *Abr. d' Aſſ. fol.* 71. F. Cor. 13. Br. Cor. 14. Stamf. 27. Br. Cor. 77. Cromp. 35. Pr. 130.

But if a man doe take away another mans wife, with her husbands goods againſt the wives will, this is felony by the ſtatute. Weſtm. 2. *cap.* 34.

As

as it ſeemeth, and ſo if any man takes away another mans wife, with her husbands goods, againſt the husbands will, this alſo is felony.

If a married woman ſhall deliver to her adulterers, her husbands goods, this is felony in the Adulterer. *Lectur. M. Cock.*

And if the husband commits Larceny, and the wife knowing thereof, doe receive or relieve him, &c. ſhee is not thereby acceſſary to the felony. *Vide poſtea tit. Acceſſorie.*

Note that a woman convicted of or for the felonious taking of any money, goods, or chattels, above the value of xij. d. and under x.s. or as acceſſarie to any ſuch offence, (the ſaid offence being no burglarie, nor robbery in or neere the high way, nor the felonious taking of any goods from the perſon of another privily) ſhall for the firſt offence be branded in the hand, and further puniſhed by impriſonment or whipping, at the diſcretion of the Iudge or Iuſtice, before whom ſhee ſhall be ſo convicted. 21 *Iac. cap. 6.*

If a ſervant by the compulſion of his Maſter ſtealeth another mans goods, this is felony in them both, notwithſtanding ſuch compulſion. See more of ſervants here before, *ſub hac tit.* *Servant.*

Lamb. 278 An ideot, lunaticke, dumbe and deafe perſon, and an infant, are chargeable in larceny, after the ſame ſort, as they are chargeable in homicide; which ſee here before in Manſlaughter, *cap.* 95. And yet if an infant ſhall commit larceny, and ſhall be found guilty thereof before the Iuſtices of Peace, it ſhall not be amiſſe for them to reſpite the judgement; and ſo hath it often beene done by the Iudges. See *Stamf.* 27. *& 3 H.* 7. *fo.* 1. *b. &* 12. *b. et* 35 *H.* 6. 11. *Br. Covert.* 80. *Ideot.* *Infant.*

At Gambridge Aſſiſes in Lent, 1619. before Sir *Henry Montague*, and Sir *John Doddridge*, Iudges of Aſſiſe there, they ſitting together upon the priſoners, an Infant about 14 yeares of age, was arraigned before them of Larceny, and was found guilty, and upon demand of his Clergie, had the ſame allowed him, and was burned in the hand.

The like was done there at Lent Aſſiſes, 1614. before Sir *Randall Crew*, Lord chiefe Iuſtice. See *Doct. & Stud. fol.* 148.

A Bailiffe, &c. diſtraineth ſecretly for rent, and after ſelleth the Diſtreſſe, and when the owner demandeth his goods which were ſo diſtrained, the Bailiffe denyeth them, this is felony, *Lect. M. Cock.*

If an Eſcheator, or other officer commeth to a man, and telleth him that he is outlawed, when he knoweth that he is not outlawed, & by colour thereof he taketh his goods, this is Felony. But if the party be indeed outlawed, and the officer commeth to take his goods, and the other party ſheweth him a *Superſedeas*, and notwithſtanding the officer taketh away his goods, this is no felony. *Ibid.*

If an officer ſhall levy any duty for the King, without warrant, this is Felony. *Lectur. Mr. Cock. Vide My Office of Sheriffe, cap.* 126.

So where any Officer ſhall levy any duty, without ſufficient warrant or authority, and ſhall after convert the ſame to his owne proper uſe, it ſeemes to be Felony.

Other Felonies by the Common Law. CHAP. 105.

11. H 7. 1 Co. 40 BVrning of a barne (which is adjoyning to a dwelling houſe) in the night feloniouſly, is Felony by the common law. *Burning houſes.*

So is it to burne a barne (in the day time) hauing corne in it, and though it adjoyne not to the dwelling house, *Co.* 4. 20. Lamb. 268.

Burning of any dwelling house, or other house parcell thereof, willingly and feloniously done, is felony by the common law, whether it be done by night, or by day. *Br. Coron.* 135. 155. 226. 3 H. 7. 10. a Co. 11. 29 Stamf. 36

Burning of any other house, or of a stacke of corne, feloniously, seemeth also to be felony by the Common law: for the words of the statute of *West.* 1. *cap.* 15. (which statute seemeth to bee but a rehearsall of the Common Law, *Br. Mainpr.* 78.) ordaineth that such as be taken for burning (generally) feloniously done, be not bailed: and of that opinion seemeth Master *Britton*, who wrote presently after the making of the same statute. *Britton, fol.* 16. See *Stat. Winchest.* 13. *E.* 1. *c.* 1, & 28. *E.* 1. *cap.* 17. And it appeareth also by *Britton, lib.* 1. *cap.* 17. that such offendors were by the Common Law to haue beene burned. *Fitz.* 269. *b.* Fitz. 269. b Co. 11. 29 Stamf. 36

The booke called the *Mirrour of Iustices*, among other capitall offences, hath this, *le crime de Arson:* and he describeth the offendors in this sort, *Ardours sont qui ardent Citie, ville, meason, home, beast, ou auters Chattels, de lour felony in temps de peace, purpaine ou vengeance.*

If a man will burne his owne house willingly, this is no felony. But if by such burning he burneth his neighbours house, this seemeth to be felony.

A man intending to burne another mans house, casteth fire thereupon, and after that it is kindled and burnt in part, it is quenched, yet this is felony, although the whole house were not burnt down.

So it seemeth if a man shooteth unlawfully in a hand gunne, and the fire thereof sets another mans house on fire, and burneth it downe, this is felony, *quare.*

If an Indictor (or Iuror) in case of treason, or felony, shall discover the Kings Counsell, and his fellowes, it hath beene adjudged felony. *Vide antea, tit. Petty Treason.*

Rescous. Rescuing or taking away from an officer, any offendor, who is attainted, imprisoned, or but arrested for felony, such *Rescous* is felony, as well in him that made the *Rescous*, as in him that is rescued. See more here *pag. sequent.* 1 H. 9. 6 Br. Co. 117 130. Stamf. 31 b

Escape. Also when a man hath arrested another for felony, and after letteth him goe at liberty, this is a wilfull escape, and shall bee adjudged felony in him that did so let him escape. And in case of treason, such escape is treason. See *paulo postea.* 9 H. 4. 2

Breaking of prison. Breaking of prison (before the statute *De frangentibus prisonam*, made 1 *E.* 1.) was felony by the common law, for what cause soever hee were in prison, yea though he had beene imprisoned but for a trespasse. But now that statute hath changed the common law therein: so that now if a man be imprisoned, or arrested, or taken for a trespasse, and doe make an escape, or be rescued by a stranger, this is but finable at this day. *Vide Fi. libro* 2. *et stat.* 10. *E.* 2. *hic cap.* 106. Stamf. 30. b See the 30 1 E. 2. & P. Prif. 3.

If an offendor which is adjudged, or otherwise by law is to abjure the Realme, shall depart, and after such departure shall returne againe without the Kings licence, then if the cause for which hee did abjure were felony, the offendor so returning shall have judgement of life and of member, by the common law: but if the cause was not for felony, then

then the offendor by the common law ſhall be taken, and onely make a fine to the King. But now ſee the ſtatute of 35. *El.* ca. 1. & 2. where it is made felony alſo for popiſh Recuſants, or other Sectaries which are to abjure, if after Abjuration they ſhall returne without the Kings ſpeciall Licence. See *hic poſtea.*

Felonies by Statute. Chap. 106.

3 H. 7. c. 14. 1 Felon. 13. IF any man being the Kings ſworne Servant, &c. ſhall conſederate, imagine, compaſſe, or conſpire with another, to deſtroy the King, or any Lord of this Realme, or any other ſworne to the Kings Councell, or the Steward, Treaſurer, or Controller of the Kings houſe, it is felonie: but what the Iuſt. of P. may do herein, ſee *antea tit. Felony.*

12. 2 Felon. 15. Breaking of priſon by one being therein for felonie, or by one being a priſoner for felonie, is felonie.

And yet M. *Finch* ſaith, that if the priſon be broken by the partie himſelfe, it is felonie, whatſoever the cauſe of his impriſonment were, yea although it were but for a treſpaſſe. *Vide libro 2. quare, & vide Fitz. Cor. 248. Eſcape non adjudicabitur vers ipſum qui commiſſ. eſt pro tranſgreſſ.*

Dyer 59. Now every one who is under arreſt for felonie, is a priſoner, and that as well without the priſon, as within, or in the ſtocks in the high ſtreet; or in the poſſeſſion of any that hath arreſted him, or that hath the keeping of him being arreſted for felony. *Vi. Libro 2.*

18. 3. 17. 12. 147. And therefore, if any perſon who is under arreſt for felony, or ſuſpition thereof (whether he be in the gaole, or out, or but in the ſtocks, or but in the poſſeſſion of any that hath arreſted him) if he ſhall make an eſcape, this is a breaking of priſon in ſuch priſoner, and is felonie.

And yet one committed to the Conſtable (by the Iuſtice) for ſuſpition of felonie, making an eſcape from the Conſtable, was after taken againe and indicted and arraigned for that felonie, and by the Iurie of Life and Death was found not guilty of that felony; and after was indicted for the eſcape: but there conſidering the priſoner was found not guilty for the firſt felony, therefore his eſcape from the Conſtable, was holden not to bee felony; and ſo I have knowne the Iury directed by the Iudge of Aſſiſe.

Before the ſtatute of 1. *Ed.* 2. if it had not been the Kings priſon which had been broken, it had been no felony, as it appeareth by *Britt. fol.* 17. And with him alſo agreeth the Book called the *Mirrour of Iuſtices lib.* 2. who ſaith thus, *Gaole neſt autre choſe que common Priſon, & nul avera tiels fr'q; le Roy: Private priſon eſt dauter dont a cheſcun liſt deſcaper que poet, ſi non que il face autre treſpaſſe que leſcape.*

3 Bd. 3. 2. But note, that at this day there is no difference whoſe priſon the offender doth break, whether it be the Kings priſon, the Lords of a Franchiſe, or any other perſons; for the letter of the ſtatute is, *Priſonam frangentibus*, and not *Priſonam noſtram*; ſo that whoſe priſon ſoever it be which is broken, it is within the compaſſe of this ſtatute, *Stamf.* 31.

Alſo whether it be a common Gaole, or a private Gaole, or Priſon, yea, or but the Conſtables houſe, or the houſe of any other perſon who hath the cuſtody of him for felony, there is no difference; for theſe are priſons

ſons for the time, and ſo within both the words and meaning of this ſtat.

Alſo by this ſtatute the breaking of priſon is felony in the priſoner himſelfe. And yet if the priſon ſhall be on fire by Caſualtie, and they within ſhal breake the priſon for ſaving of themſelues, this is no felony, but excuſable by the law of Nature. *Pla. fol.* 13.*b.* 14.*H.*7.29. Reade 15.*H.*7.2.

Reſcous. And if a ſtranger doth breake the priſon, or open the ſtocks, or make a *Reſcous*, whereby one impriſoned, or arreſted for felonie, eſcapeth, this is felony both in the priſoner, and in the ſtranger, although the priſoner was never indicted of the felony. 1 H.7.6. 1 Ed.3.17. Dyer 29.

By ſome opinions, if a ſtranger ſhall diſturbe the arreſting of a Felon, it is no felony, except the Felon were taken and arreſted, and after reſcued: yet *Fitz. Inſt. P. fol* 114. ſaith, that ſuch diſturbance before arreſt, is Felonie. 9 H.4 1. F.Cor. 23. Stamf. 34.

If a priſoner be reſcued at the Gallows, or as he is going to execution, this is a breaking of priſon, and Felonie within this ſtatute. And yet note this difference, *ſc.* that if a Felon in going to his execution, &c. be reſcued from the Sheriſe, this is Felonie, if it be preſented before the Iuſtices, &c. and ſo found by Enqueſt. But otherwiſe it is if it commeth in by the Returne of the Sheriſe, there it is no felonie. 1: *Hen.*7. *fol.* 6. *Fitz. Indictment* 30. 1 H.76.

Eſcape. If a Gaoler, a Conſtable, or any other, which hath a priſoner under arreſt for felony, or ſuſpition thereof, voluntarily letteth, or ſuffereth him to go at libertie; (though this be no breaking of priſon, yet) this is Felony in the Gaoler, Conſtable, or him that letteth ſuch priſoner eſcape, but it is no Felonie in the priſoner: but if ſuch a priſoner ſhall eſcape by the negligence of his Keeper, then the felony reſteth in the priſoner onely, and not in the Gaoler, &c. P.R.146. 149. 44.Aſſ.2. Br.Eſc.31. Stamf.32.

If the Gaoler or Keeper ſhall marrie a Felon which is in his Gaole, this is an eſcape, but *quare* whether it be Felony in the Gaoler or no.

If a Gaoler ſhall let a Felon to mainpriſe, which is not mainpernable or bailable, *dicitur* that this is no felony, but finable: for although it were voluntarie, yet it was *per ignorance del Ley*. But *quare* hereof, for that the Gaoler hath no authoritie to let any priſoner to baile; and the priſoner being in for Felonie, the Sheriſe himſelfe at this day hath no authoritie to bayle ſuch a priſoner, except it bee by vertue of the Kings Writ, &c.

If the Conſtable (or other officer) ſhall voluntarily ſuffer a thiefe, being in his cuſtody, to goe into the water to drowne himſelfe, this eſcape is felonie in the Conſtable, and the drowning is felonie in the thiefe, *quia ſelo de ſe*. Otherwiſe if the thiefe ſhall ſuddenly (without the aſſent of the Conſtable) kill, hang, or drowne himſelfe, this is but a negligent eſcape in the Conſtable.

The voluntary letting of a Felon to eſcape, which is not arreſted for felony, though he knoweth of the Felony, yet it is no felony; neither can it bee an eſcape without an arreſt: and yet ſuch an offendor (being an officer) may for ſuch his negligence or default, be indicted, and fined, as it ſeemeth by the words of the Commiſſion: *Quare* if he be not acceſſary to the felony. See *Br. Eſcape.* 43. P.R.149. 150. 9 H.4.2. Stamf.31.

Note that a man is alwaies ſaid to bee in priſon, ſo long as hee is within Dyer 49.

in the ſight of the Gaoler, or of him that hath him in cuſtody, though hee do break away or eſcape.

Stanf 31. H.8.c.4 & 13. For an eſcape is properly, when a priſoner ſhall eſcape and get out of the view of his gaoler or keeper, and ſhall not be taken again by freſh ſuit.

And if a priſoner ſhall make an eſcape (of his own wrong, and without the conſent of the Gaoler, or other perſon that hath him in cuſtody) though he eſcape out of their ſight, and into another County, yet if hee bee taken again upon freſh ſuit, before the Gaoler, &c. (be fined or) hath fined for the eſcape (though it be ſeven yeeres after) yet this is no eſcape, as it ſeemeth, for which the officer ſhall be charged; for there is no prejudice to the King by the eſcape, though it be Felony in the priſoner, as aforeſaid, and a breaking of priſon in him. *Co.* 3. 44. & 52. accordeth in caſe of a priſoner taken in execution, that ſhall make an eſcape of his own wrong.

Co. 3. 44. Stanf. 33. c. If a Gaoler, or other officer, &c. ſhall licence his priſoner to go abroad for a time, and to come againe; this is an eſcape, becauſe the priſoner is found out of the bounds of his priſon, though the priſoner returne againe according as hee ſhall bee preſcribed: and ſo is it, if the officer ſhall ſuffer his priſoner to go abroad for a time, by baile or baſton, this is an eſcape; yet they are holden in both caſes to bee but negligent eſcapes in the officer, and ſo but finable. But *quare*, for the Gaoler and other officers ought to keepe their priſoners in *ſalvo & arcta cuſtodia. Vide poſtea tit. Impriſonment.*

Fitz. Cor. 243. & 431.

Note, that the Sheriſe of every County ſhall have the keeping of, and ſhall bee chargeable and charged with the common Gaole and Priſon of the ſame County, and with all the priſoners therein; and muſt put in ſuch Gaolers or Keepers for whom they will anſwer, as appeareth by the ſtatutes 14. *Edwar.* 3. *cap.* 10. & 19. *Hen.* 7. *cap.* 10. which alſo ſeemeth to hath been the common Law before, (as you may ſee by the Preamble of the ſtatute of 14. *Ed.* 3. & *Co.* 4. 34.) and therefore the high Sheriſe himſelfe ſhall bee anſwerable for an eſcape of a felon, ſuffered by his Gaoler, and may bee indicted for the ſame; (ſee the *Preſidents* in *Lambert*, *Weſt*, and *Crompton*:) And ſo the high Sheriſe as hee hath an office of great antiquity, and of great truſt and authority, (for the time) ſo withall it is a place of great perill and charge; and if the rigour of Law ſhould bee laid upon them, then ſhould they have a warme office, and bee well rewarded. But in ſuch caſes I have obſerved the favourable expoſition and dealing of the learned and reverend Iudges: Firſt, you ſhall finde in Sir *Ed. Cokes Reports*, *lib.* 9 *f.* 98. that the Gaolers who have the actuall poſſeſſion ſhall bee anſwerable for eſcapes, if they have wherewith: alſo *Popham* chiefe Iuſtice, did cauſe one *Staver* (a Gaoler at Cambridge) to bee indicted, arraigned and hanged for an eſcape of a felon, ſuffered by him.

6 H. 7. 11. Co. 4. 33. Weſt. M. 1. Co. 9. 98. Lamb. 11. 5. Cap. Eliz.

In the *Doct. & Stud. cap.* 42. this difference is taken, *ſc.* that if the eſcape were by default (*ſc.* a negligent eſcape) of the gaoler, that the King may charge the gaoler if hee will, or the Sheriſe may be charged by reaſon of the ſtat of 14. *E.* 3. *cap.* 9.

But if it bee a wilfull eſcape in the gaoler (which is felony in him) the Sheriſe ſhall not bee bound to anſwer to the Felonie, (See there, *fol.* 135. & 137.) But there the Sheriſe may bee fined to the value of his goods,

goods. *Stanf.* 35. *b.*

Escape is of two sorts. Now an escape is of two sorts: voluntary, and negligent.

Voluntary escape, is where one doth arrest or hath imprisoned another for felonie (or other offence) and after voluntarily letteth him go at liberty where he will. Stanf. 32.

Negligent escape, is when the partie arrested or imprisoned, doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken againe before he hath lost the sight of him which escaped; the penaltie thereof seemeth to be onely a fine at the discretion of the Judges or Justices: yet see *Stanf.* 35. *b.* a difference of the fine, where the prisoner is attainted *le fine ferra C.* & where but indicted C. s. and where onely taken upon suspition, *semble dispunishable. quære*, *& vide f. Coron.* 224. 316. 454. *& hic infra*, that in Case of a trespasse a negligent escape is finable. Stanf. 33.

But for voluntary escape, if the arrest or imprisonment were for felonie, it shall be adiudged felonie in him, which did voluntarily suffer the prisoner to escape; and if the arrest, &c. were for Treason, it shall be adiudged Treason, and if the arrest or imprisonment were for a trespasse, it shall be adiudged a trespasse: And in case of felonie, there is no difference, whether the felon be arrested by an officer, or by another. See *Br. Cor.* 112. Stanf. 32. b

Also in case of a trespasse, or other offence of what kinde soever, (being neither treason nor felonie) there seemeth no difference, whether the escape suffered by the officer, &c. bee voluntarie, or negligent; but that the Officer in both cases shall bee fined for such an escape, according to the quantitie of his fault, by the discretion of those that shall bee Iudges of it.

One *Nichols* assaulted *Cholmely* to rob him, and killed him, after Queene *Eliz.* granted *Nichols* his pardon, but *Cholmely* his wife having commenced her appeale against *Nichols*, he was still detained in prison at the womans suit; after the Gaoler suffered *Nichols* voluntarily to go at large, and so to escape; by the opinion of M. *Plowden* this was felonie in the Gaoler, although *N.* the prisoner were now no felon as to the Queene, in regard hee had obtained his pardon. *Plo.* 476. *b.*

A prisoner found guilty of petie Larcenie, is adiudged to be imprisoned by the space of a moneth (for his punishment) and after the moneth hee breaketh prison, and escapeth, *quære* what this is in the prisoner, and what in the Gaoler: It is holden that the Gaoler shall bee charged with this escape; but if a prisoner bee discharged (by iudgement) paying his fees, if he escape, here the Gaoler is not chargeable; the difference is, the prisoner in the first case was by iudgement committed to prison; and in the last case he is adiudged to bee acquit of his imprisonment, paying, &c. and yet he is a prisoner untill hee hath payed his fees. 21. *H.* 7. 17. *a. Br. Escape* 16. *Plo.* 465. F. Cor. 430 & 431. P.R. 150.

Note that a voluntary escape is no felonie, if the act done were not felonie at the time of the escape made; as if *A.* do strike *B.* and hurt him mortally, whereupon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dyeth of that stroke, this escape is no felonie, either in the Constable, or in the prisoner; yet the Constables shall make a great fine, yea shall (or may at the discretion of the Iudges) be 12 H. 412. Plow. 258. 263. & 402. Br. Esc. 17.

be fined to the value of their goods (as it ſeemeth) by 11. *H.* 4. 12. and *Stamf.* 35. *b.* becauſe this eſcape was voluntary.

If a man be wounded, and the percuſſor is voluntarily let go at large by the Gaoler, and after death enſueth of the hurt, yet this is no felonious eſcape in the Gaoler. 11. *H.* 4. 12. *Ba.* 38.

Cromp. 39 The voluntary ſuffering him to eſcape, who hath killed another, *ſe defendendo*, or by miſadventure; or of him that hath committed petty Larceny, ſeemeth not to be felony, for that theſe offences are no felony of death; but hee that ſuffereth ſuch an eſcape, ſhall bee fined only, *Cromp.* Yet *quære*, for they that ſuffered this eſcape, are not to judge whether theſe offences bee felony or no. See hereof *poſtea tit. Evidence againſt Felons.*

A man was taken for ſuſpicion of felony, and was delivered to the Conſtable of *C*, and after eſcaped for want of good keeping, and the Conſtable was therefore taken and arraigned; and pleaded, that for as much as the felon was not taken with the manner, nor at the ſuit of the party, nor indited of felony, therefore it was no eſcape, &c. And ſo was the opinion of the Court then. See 42. *Aſſ. p.* 5. *Br. Eſcape* 29.

But the contrary was after holden in caſe where the eſcape was voluntary, although the priſoner were taken only upon ſuſpicion. 44. *Aſſ. p.* 12. *Br. Eſcape* 31. *& Dyer* 99. that it is felony, although the priſoner were not indited of felony.

4 Ed. 104 Note alſo, where one is a priſoner by arreſt only, and hee doth eſcape,
Eſcape 2 there the eſcape ſhall bee preſented before the Iuſtices of peace, or other
Stamf. 5 c Iuſtices having authority to inquire of the eſcape, before hee that ſuffered the eſcape ſhall anſwer it, *ſc.* before any thing ſhall bee taken, or levied, by the Sheriſe, or other officer. *Vide Co.* 11. 64. 65. *& Stat. Weſtm.* 1. *c.* 4.

8 H. 7. 7 Note alſo, if a man be arreſted for ſuſpicion of felony by the Conſtable,
Cromp. 40. or other perſon, and after they ſhall have intelligence that there is no ſuch
18. 151. 152 felony committed, here they may ſet the party arreſted at liberty againe,
Cro. 34 and they ſhall not bee charged with the eſcape; for there can bee no felon, where there is no felony committed.

44 Aſſ. 12 But if a man be ſlain, or that there be any other felony committed, and
Cromp. 40 one is arreſted for the ſame felony, or for ſuſpicion thereof, though hee that
Cro. 14. made the arreſt, ſhall after have intelligence, and certain knowledge, that the party arreſted is not guilty of that offence, yet hee or any other may not ſet the party ſo arreſted at liberty; for now he muſt not bee delivered by any mans diſcretion, but by courſe of Law; otherwiſe it will prove a voluntary eſcape, and no felony, or at leaſt finable.

And yet if a Watchman ſhall take any man for ſuſpicion of felony, hee may inquire of his good name and fame, and if he findes him to bee of good name and fame, hee may let him go. See the *old Iuſtice of peace*, imprinted *Anno* 1559. *fol.* 13. But it were more ſafe for the Watchman to deliver ſuch ſuſpected perſon to the Conſtable, Iuſtice of peace, or to the Sheriſe, according to the ſtatute of Wincheſter. See *hic antea tit. Watch.* 60.

15. H. 43 If a Iuſtice of peace ſhall ſend for a felon out of the Gaole, and ſhall
39. deliver him without baile, this ſeemeth to bee a voluntary eſcape, and ſo

felony

Felony in the Iuſtice, otherwiſe where the Iuſtice erreth *pro defectu ſcientiæ*, as to baile one that is not baileable; this is but a negligent eſcape.

If the Iuſtice of Peace or Sheriffe ſhall baile one who is not bailable, this is an eſcape. *Fitz. Eſcape 4. & Cr. 246.* (*ſc.* a negligent eſcape, if it be in ignorance, *ut ſupra.*)

But if one that is brought before a Iuſtice of Peace for ſuſpition of Felony, ſhall confeſſe the Felony before the Iuſt. and yet he ſhall ſuffer the priſoner to goe (at large without baile,) this is a voluntary eſcape, &c. *v. Cro.* 39.

Now to proceed with Felonies by Statute. CHAP. 107.

BVggery committed with mankinde or beaſt, is Felony (without benefit of Clergy) 25 *H.* 8. *c.* 5. *Eliz.* 17. it being a ſinne againſt God, Nature, and the Law, and in ancient times ſuch offendors were to bee burned by the Common Law. *Fitz.* 269. *b. Fi. libro* 2. P.Fel.9 Exod. 22.19 Levit. 18.23

One deſcribeth this offence, to be *Carnalis copula contra naturam.*

& hæc per confuſionem { *Speciorum, ſc. homo, ou feme, ove brute beaſt.* / *Sexuum, ſc. homme ove homme, feme ove feme.*

Et ceo poet eſtre ſans penetration; Car lonſe del corps deſpend le ſeede in tiel caſes, ſuit ceo Buggery diens ceo fiat. ſans penetration: Et iſſint fuit tenus in le caſe le Sign' A. come iee oye.

Burning of houſes, and ſtackes of corne, ſee before, *cap.* 105.

If a man maketh a bill or writing, and layeth or caſteth the ſame at another mans doore, therein threatning to burne his houſe, if hee giveth him not ſome money, &c. this hath beene taken to bee Felony. See *6 H.* 7. *f.* 13. 4. And *quare*, what ſtatute it is that the booke meaneth. Note by the ſtatute of 8 *Henry* 6. *cap.* 6. ſuch offence was made treaſon, if after the offendor did burne the houſe; but that ſtatute of 8 *H.* 6. ſtandeth now repealed. Br.Cor.11

Congregations and confederacies holden by Maſons, it is Felony in the cauſers thereof, and finable in the Maſons that come to ſuch Congregations, 3 *H.* 6. *cap.* 1. P.Fel.21

Cutting out of any the Kings ſubjects tongues, or putting out their eyes, of malice pretended, is Felony, 5 *H.* 4. 5. And for theſe the offendor ſhall looſe his life, lands, and goods. P.Fel.19

Cutting or breaking downe of Powdike, or other bankes in Marſh land, maliciouſly, is Felony, 2. *&* 3. *Ph. et M. cap.* 19. 22.H.8.11 P.Fel.15

1 Coniuration, or invocation of any evill Spirit, for any intent, &c. or to be counſelling, or ayding thereto, is Felony without benefit of Clergy. See *Exod* 22. 18. *Deut.* 18. 11. *et Levit.* 20, 27. 1.Inc.12 P.Fel 67.

2 To conſult, covenant with, entertaine, employ, feed, or reward any evill ſpirit, to or for any intent or purpoſe, is Felony in ſuch offendors, their ayders and counſellors.

3 To take up any dead body, or any part thereof, to bee employed or uſed in any manner of Witchcraft, is Felony in ſuch offendors, their ayders and counſellors.

4 Alſo to uſe or practiſe Witchcrafts, Enchantment, Charme, or Sorcery, whereby any perſon ſhall be killed, pined, or lamed in any part of their body, or to be counſelling or ayding thereto, is Felony: By the ancient common law ſuch offendors were to be burned, *Fit.* 269. *b.*

5 Alſo

5 Alſo the ſecond time to practiſe Witchcraft, &c. thereby to declare where any treaſure may be found, is felony.

6 Or where any goods loſt, or ſtoln, may be found.

7 Or whereby any cattell or goods ſhall be deſtroyed or impaired.

8 Or to the intent to provoke any perſon to love.

9 Or to the intent to hurt any perſon in their body, though it bee not effected: All theſe are felony, *ſc.* the ſecond offence; and without benefit of Clergy.

Now againſt theſe Witches, (being the moſt cruell, revengefull, and bloody of all the reſt) the Iuſtices of peace may not alwayes expect direct evidence, ſeeing all their works are the works of darkneſſe, and no witneſſes preſent with them to accuſe them; and therefore for their better diſcovery, I thought good here to inſert certain obſervations, partly out of the book of diſcovery of the Witches that were arraigned at Lancaſter, *an. Dom.* 1612. before Sir *Iames Altham*, and Sir *Ed. Bromley*, Iudges of Aſſiſe there; and partly out of M. *Bernards* Guide to Grand Iury men. *Witches.*

1. Sam. 28 7 Chro. 10 13. 1 Theſe Witches have ordinarily a familiar or ſpirit, which appeareth to them; ſometimes in one ſhape, ſometimes in another; as in the ſhape of a Man, Woman, Boy, Dog, Cat, Foale, Fowle, Hare, Rat, Toad, &c. And to theſe their ſpirits they give names, and they meet together to chriſten them (as they ſpeake) *Ber.* 107. 113.

2 Their ſaid familiar hath ſome big or little teat upon their body, and in ſome ſecret place, where he ſucketh them. And beſides their ſucking, the Devill leaveth other markes upon their body, ſometimes like a blew ſpot, or red ſpot, like a flea biting; ſometimes the fleſh ſunk in and hollow, (all which for a time may bee covered, yea taken away, but will come againe to their old forme.) And theſe the Devils markes bee inſenſible, and being pricked wil not bleed, & be often in their ſecreteſt parts, and therefore require diligent and carefull ſearch. *Ber.* 112, 219.

Theſe firſt two are maine points to diſcover and convict theſe Witches; for they prove fully that thoſe Witches have a familiar, and made a league with the Devill. *Ber.* 60.

So likewiſe if the ſuſpected bee proved to have been heard to call upon their ſpirit, or to talk to them, or of them, or have offered them to others.

So if they have been ſeen with their ſpirit, or ſeen to feed ſome thing ſecretly; theſe are prooſes they have a familiar, &c.

3 They have often pictures of clay or wax (like a man, &c. made of ſuch as they would bewitch) found in their houſe, or which they roaſt, or bury in the earth, that as the picture conſumes, ſo may the parties bewitched conſume.

4 Other preſumptions againſt theſe Witches, as if they bee given to uſuall curſing and bitter imprecations, and withall uſe threatnings, to bee revenged, and their imprecations, or ſome other miſchiefe preſently followeth. *Ber.* 61. 205.

5 Their implicite confeſſion; as when any ſhall accuſe them for hurting them or their cattell, they ſhall anſwer, You ſhould have let mee alone then; or, I have not hurt you as yet: theſe and the like ſpeeches are in manner of a Confeſſion of their power of hurting. *Ber.* 206.

6 Their diligent inquiry after the ſicke party, or comming to viſit

viſit him or her, unſent for; but eſpecially being forbidden the houſe.

7 Their apparition to the ſick party in his fits.

8 The ſick party in his fits naming the parties ſuſpected; and where they be, or have been, or what they do, if truly:

9 The common report of their neighbours, eſpecially if the party ſuſpected be of kin, or ſervant to, or familiar with a convicted Witch.

10 The teſtimony of other Witches, confeſſing their owne witchcrafts, and witneſſing againſt the ſuſpected, that they have ſpirits or marks; that they have been at their meetings; that they have told them what harm they have done, &c. *Ber.* 212. 223.

11 If the dead body bleed upon the Witches touching it.

12 The teſtimony of the perſon hurt upon his death.

13 The examination and confeſſion of the children (able and fit to anſwer) or ſervants of the Witch, eſpecially concerning theſe ſix obſervations. *ſc.* If the party ſuſpected have a familiar, or any teat, or pictures; her threatnings and curſings of the ſick party; her enquiry after the ſick party; her boaſting or rejoycing at the ſick parties trouble: Alſo whether they have ſeen her call upon, ſpeak to, or feed any ſpirit, or ſuch like; or have heard her foretell of this miſhap, or ſpeak of her power to hurt, or of her tranſportation to this or that place, &c.

14 Their owne voluntary confeſſion (which exceeds all other evidence,) *ſc.* of the hurt they have done, or of the giving of their ſoules to the Devill, and of the ſpirits which they have, how many, how they call them, and how they came by them.

15 Beſides, upon the apprehenſion of any ſuſpected, to ſearch alſo their houſes diligently, for pictures of clay, or wax, &c. haire cut, bones, powders, books of witchcrafts, Charmes, and for pots or places where their ſpirits may be kept, the ſmell of which place will ſtink deteſtably.

Now to ſhew you further ſome ſignes, to know whether the ſick party be bewitched.

1 When a healthfull body ſhall be ſuddenly taken, &c. without probable reaſon, or naturall cauſe appearing, &c. *Ber.* 169.

2 When two or moe, are taken in the like ſtrange fits, in many things.

3 When the afflicted party in his fits doth tell truly many things, what the Witch, or other perſons abſent are doing or ſaying, and the like.

4 When the parties ſhall do many things ſtrangely, or ſpeake many things to purpoſe, and yet out of their fits know not any thing thereof.

5 When there is a ſtrength ſupernaturall, as that a ſtrong man or two, ſhall not be able to keepe downe a child, or weake perſon, upon a bed.

6 When the party doth vomit up crooked pins, needles, nailes, coales, lead, ſtraw, haire, or the like:

7 When the party ſhall ſee viſibly ſome Apparition, and ſhortly after ſome miſchiefe ſhall befall him. *Ber.* 173.

Note, for the better riddance of theſe Witches, there muſt good care be had, as well in their examinations taken by the Iuſtices, as alſo in the drawing of their Indictments, That the ſame be both of them ſet down directly in the materiall points, &c.

As

That

That the Witch (or partie ſuſpected) hath uſed Invocation of ſome Spirit.

That they have conſulted or covenanted with their Spirit.

That they imployed their Spirit, &c.

That they have fed or rewarded their Spirit.

That they have killed, or lamed, &c. ſome perſon, &c.

And not to indict them generally for being Witches, &c.

The difference betweene Conjuration, Witch-craft, and Inchantment, &c. is this; *ſc.* Coniurers and Witches have perſonall conference with the Devill, or evill Spirit, to effect their purpoſe, See *1. Sam.* 28. 7. &c. The Conigrers beleeve by certaine terrible words, that they can raiſe the Devill, and make him to tremble, and by impailing themſelues in a circle (which as one ſaith, cannot keepe out a mouſe) they beleeve that they are therein inſconſed, and ſafe from the Devill whom they are about to raiſe; and having raiſed the Devill, they ſeeme by prayers, and invocation of Gods powerfull Names, to compell the Devill to ſay, or do what the Coniurer commandeth him.

The Witch dealeth rather by a friendly and voluntarie conference, or agreement betweene him (or her) and the devill or familiar, to have his or her turne ſerved, and in lieu thereof the Witch giveth (or offereth) his or her ſoule, bloud, or other gift unto the devill.

Alſo the Coniurer compacts for curioſitie, to know ſecrets, or worke miracles: and the Witch of meere malice to do miſchiefe, and to be revenged.

The Inchanter, Charmer, or Sorcerer, theſe have no perſonall conference with the Devill, but (without any apparition) worke and performe things (ſeemely at the leaſt) by certaine ſuperſtitious and ceremoniall formes of words (called charmes) by them pronounced: or by medicines, hearbes, or other things applyed above the courſe of nature, and by the Devils helpe, and covenants made with him.

Of this laſt ſort likewiſe are Soothſayers, or Wiſards, which divine and foretell things to come, by the flying, ſinging, or feeding of birds, and unto ſuch queſtions as bee demanded of them, they do anſwer by the Devill (or by his help,) *ſc.* they do either anſwer by voyce, or elſe do ſet before their eyes in glaſſes, Chryſtall ſtones, or Rings, the pictures or images of the perſons or things ſought for.

Imbeſilling of the Kings Majeſties Ordnance, armour, ſhot, powder, or other habiliments for warre, or victuals, provided for ſouldiers, &c. if it be by any perſon having the charge or cuſtody thereof, and to the value of xx s. though at ſeverall times, it is felony. 31. *El.* 4.

Imbeſilling of any Record, or parcell thereof, Writ, Returne, Pannell, Proceſſe, or Warrant of Attourney in the Chancery, Exchequer, Kings Bench, Common place, or Treaſury, (by reaſon whereof any judgement ſhall be reverſed) it is felony in the parties, and in their counſellors, procurers, or abbettors.

So the raſing of ſuch Record, is felony (within the ſaid ſtat. of 8 *H.* 6.) yet if a Iudge do imbeſill or raze a Record, this is but miſpriſion in the Iudge. 2. *R.* 3. *Br. Cor.* 174. & *Treaſon* 31.

But it ſeemeth the Iuſtices of peace have not to do with theſe two laſt ſorts of felonies, (*ſc.* with imbeſilling, or razing of Records) for that theſe

theſe felonies are committed to other Iudges to deale with, by the ſame ſtatute of 8 *H.* 6. *P. Records* 4. See before *tit. Felony, cap.* 26.

Egyptian; *ſc.* if any perſon of the age of 14 yeeres, or above, ſhall call himſelfe an Egyptian; or ſhall be in the company of ſuch, or ſhall diſguiſe himſelfe in apparell, ſpeech, or otherwiſe like ſuch, and ſhall be or continue in England one moneth, at one or ſeverall times, it is felony, without benefit of Clergy. *St.* 1. 2. *P. et M.* 4. 5. Eliz. 14 P. Fel. 28

Note that theſe manner of perſons, are beſides all of them for the moſt part theeves, cutpurſes, cozeners, or the like, and therefore the Iuſtice of Peace ſhall doe well to be careſull, not onely in the examining of them, but alſo to cauſe them to be well ſearched for counterfeit Paſſes, ſtolne goods, and the like.

Every perſon which ſhall acknowledge any fine, recovery, deede inrolled, ſtature, recogniſance, baile, or judgement, in the name of any other perſon, not privie or conſenting to ſame, being thereof lawfully convicted, ſhall bee adjudged a Felon, without benefit of Clergy, &c. 21 *Iac. Regis cap.* 26.

Foreſtalling, or buying any merchandiſe before they come to the Staple, &c. was made felony by the ſtature, 27 *Ed.* 3. *cap.* 11.

Forging of Evidences, *ſc.* of any Deed, Charter, Obligation, Bill, Releaſe, or other writing ſealed, or of any Court Roll, or Will, or of any Acquittance; or to cauſe or aſſent to bee made any ſuch forged writing; or publiſhing any ſuch writing, knowing the ſame to bee falſe, the ſecond offence is felony without benefit of Clergy. But it ſeemeth alſo that the Iuſtices of peace have not to deale with this, for that they cannot well take notice of the former conviction. See *Co.* 9. 118. *b. & hic antea, tit. Felony, cap.* 20. 5. Eliz. 14. P. Fel. 28 Lambard

Gaolers (by dureſſe of impriſonment and pain) inforcing their priſoner to become an approver, (that is, an accuſer of others as coadjutors with him in felony) this is felony in ſuch Gaoler, although the appellee, or party ſo accuſed, be acquit, or ſhall happen to die before he be arreſted upon the appell, &c. *Stamf.* 36. 14. *E.* 3. 10. P. Fel. 17 Stanl. 36

If a Gaoler ſhall only procure his priſoner to appell or accuſe another of felony, this is felony, by *Scrop. An.* 18. *Ed.* 3. *Abr. d' Aſſ.* 75. *& Fit. Cor.* 272. And yet the ſtatute of 14. *Ed.* 3. ſeemeth to extend only where the Gaoler ſhall do this by great dureſſe or paine. 3 Iac. 1 P. Fel. 4

Alſo by *Britt. f.* 18 if the Gaoler ſhall keep his priſoner more ſtrait than he ought of right to do, by reaſon whereof the priſoner dieth, this is felony by the Common Law in the Gaoler. (And herein the book called *Speculum Iuſticiar.* agreeth with *Britton.* And yet by the ſtatute of *Weſtm.* 1. *cap.* 12. notorious felons, and ſuch as be openly of evill name, or which be rebellious, they ſhall have ſtrong and hard impriſonment. P. Fel. 21 Hic. cap. 9

Hawkes: whoſoever findeth any Hawk that is loſt, if he ſhall not immediatly bring the ſame to the Sherife of the ſame County, to bee proclaimed, &c. but doth imbeſill, and carry away the Hawk, it is felony. 34. Ed. 3. 37. Ed. 3. 19 P. Fel. 29

So is it in him whoſoever taketh up any Hawk, and concealeth the ſame from the owner, or his Faulkner; or that taketh away any Hawk from the owner, or ſtealeth any Hawk, and carrieth it away, not obſerving the aforeſaid ordinance. 3 Iac. 31 P. Fel. 33 P. Hawk 2. Vide

Hun-

1 H. 7. 7 H. 24 Lamb. 271 Dyer. 50

Hunting of Deere or Conies in any parke, forreſt, or warraine, unlawfully in the night time, or with viſors, or other diſguiſings, and (upon examinations by a Iuſtice of peace, &c.) to conceale the offence, or any offender therein, is felony in ſuch concealer: but if ſuch offender (upon his examination) ſhall confeſſe all the truth, then he is but fineable. See hereof *antea tit. Hunting.*

If any perſon to be arreſted for ſuch offence ſhall diſobey the arreſt, or if any perſon ſhall make reſcous, ſo that the warrant (of the Iuſtice of peace, &c.) for arreſting them be not executed, it is felony.

Quære, if ſuch hunting and concealment, or reſiſtance, be felony where the offenders killed no Deere, &c. it ſeemeth no, for all the *Preſidents* do run, *Occiderunt & aſportaverunt, &c.* See *Lambert, Cromp. & Weſt.*

Alſo *Quære*, if all ſuch hunting diſguiſed, or any other unlawfull hunting in the night time, be not felony, although the offendor be never examined thereof, nor conceale the ſame as aboveſaid. See the ſtatute, 1 *H.* 7. *cap.* 7. *in fine*, where it ſeemeth that all unlawfull hunting in the night (generally) is felony.

1 Ed. 2. 20 1 Pol. 24

If any perſon ſhall take a tame beaſt, or other thing in a parke, by manner of robbery, it is felony: and the ſtatute ſeemeth to be but an affirmance of the common law in this point.

6 H. 13.

Impriſoning, or taking againſt their wills (without lawfull authoritie) any ſubject, in Cumberland, Northumberland, Weſtmerland, and the Biſhopricke of Dureſme, and carrying them away, to make a prey of them:

Or to be privie, conſenting, procuring, aiding, or aſſiſting thereto:

Or to receive, carry, or give any conſideration (called Blackmaile) for protection therein:

Or to burne any barne, or ſtacke of corne there: or to be aiding, procuring, or conſenting thereto:

Everie of theſe offences is felonie, without benefit of Clergy, 43. *El. cap.* 13.

1 Iac. 11 1 Pol. 4

Marriage, *ſc.* if any perſon being married, ſhall marry a ſecond husband or wife, the firſt being alive, &c it is felony, except notwithſtanding where the husband or wife have beene abſent ſeven yeeres, and the one not knowing the other to be living within that time, except alſo perſons divorced, &c. by ſentence in the Eccleſiaſticall court; and except perſons marrying within the age of conſent.

1 Pol. 31

Multiplication of gold, or ſilver, or to practice that art, is felony: 5. *H.* 4. 4. *Vide Dyer* 88. *Pl.* 105.

Money called Galley Halfe-pence, Suskin, or Dotkin, and all Scottiſh money of ſilver, to bring and put in paiment any ſuch, was made felonie by the ſtat. 3. *H.* 5. 1. *&* 2. *H.* 6. 9. but they are now out of uſe.

Pyracie, concerning this offence, ſee the ſtatute, 28. *H.* 8. *cap.* 15. *& hic antea tit. Petty Treaſon.*

1 Iac. 31 1 Pol. 33

Plague, *ſc.* if any perſon being infected with the plague, which being commanded by any officer to keepe his houſe, ſhall notwithſtanding go abroad, and converſe in companie, having an infectious ſore upon him, it is felonie.

Poyſoning, *ſc.* wilfull killing of any perſon by poyſon, is wilfull

murder in the offenders, their aiders, abbettors, procurers, and counſellors, *1. Ed. 6. 12. Co. 11. 31.* But the partie poyſoned muſt dye thereof within a yeare and a day after the poyſon received: ſee *antea* in the title *Murder, cap. 93.* P.Fel.37. P.Murd.5

Popiſh Prieſts, to receive, relieve, aid, or maintaine any ſuch, &c. is felony; ſee hereof *antea tit. High Treaſon.* P.Ieſuits.1

Popiſh Recuſants, and ſuch other Recuſants or ſectaries, which (by the ſtatutes of 35 *El. 1. & 2.*) are to abjure, if they ſhall refuſe to abjure, or after abjuration ſhall not depart the Realme according as they ſhall bee appointed, or after ſuch departure ſhall returne againe without the Kings ſpeciall licence in that behalfe firſt obtained, it is Felonie without benefit of Clergie. P.Fel.5

Purveyors, *ſc.* if any Purveyor, Taker, or other perſon, their deputies or ſervants, ſhall make any purveyance, takings, (or priſes) for the Kings Maieſties houſe, of any thing above the value of xii. d. (*2. & 3. Ph. & M. cap. 6.*) in any of the ſixe ſorts following: P.Fel.25 P.Purv.30 Lamb.402 Crom.48

1 Without warrant, or commiſſion under the great ſeale, and do carrie the ſame away againſt the will of the owner, it is felonie, 28. *E. 1. c. 2. 4. E. 3. c. 4. 36. E. 3. c. 2.* (which warrant alſo they ſhall ſhew to the parties, before they do take any thing from them.) P.Purv.14 23.H.6.12

And note, that no ſuch commiſſion ſhall continue good, or be in force, above ſix moneths; and they muſt be written in the Engliſh tongue, ſo that every man may underſtand them. See the Statutes 36. *E. 3. c. 2.* 23. *H. 6. cap. 1. & 2. & 3. Ph. & M. c. 6.*

2 Or having a commiſſion, ſhall buy or take (any thing) in other manner than is contained in their warrant or commiſſion, *P. Purv. 19. fol. 25. Raſt. 350. 36. Ed. 3. cap. 2.* 36.Ed.30 23.H.6.12

3 Or ſhall take any carriage in other manner than is compriſed in their commiſſion, *Stat. 36 Ed. 3 2. P. 19. 23. H. 6. 1. 2.* P.Fel.35 P.Purv.19

4 Or having a commiſſion, ſhall take and carry away any thing (above the value of xii. d.) againſt the owners will, or not paying for the ſame preſently according as they can agree; or if the buyer and ſeller cannot agree, then to take any thing without being praiſed by the Conſtable and foure townſmen, and by Indentures ſealed by the Purveyor, &c. of the things ſo taken, &c. See the Statutes 5. *E. 3. 2. 10. E. 3. 1. 25. E. 3. 1. 36. E. 3. c. 2. 2. H. 4. 14. & 20. H 6. c. 8.* 36.E.3.21 Raſt.351. Crom.48

And yet, if it be but of the value of 40 s. or under, ſome do hold that in this laſt caſe the Purveyor ſhall onely loſe to the partie grieved, the treble value of his goods ſo taken, and his coſts, and treble damages: and that it ſhall be at the election of the owner of the goods to recover his ſaid dammages and coſts, &c. either againſt the Purveyor, or againſt the neighbours, Priſors, and Townes adioyning, which being required, ſhall not reſiſt the Purveyor or taker, doing contrarie to the ſtatute. See the Statutes 2. *H. 4. 14.* 20. *H. 6. 8. & 23. H. 6. cap. 1. & 2.* But *quære*, for all thoſe former Statutes do ſtand ſtill in force, and be confirmed by theſe latter Statutes, and by the ſtatutes made 2 *& 3. Ph. & M. cap. 6.*

5 Or ſhall take more victuals or carriages for the Kings houſe, than he ſhall deliver to the ſame houſe, 36 *E 3. cap. 4. Fitz. Inſt. of P. 114.* P.Fel.25 P.Purv.18

6 Or ſhall take any ſheepe with their wools betweene Eaſter and Mid-

ſummer,

summer, at ſmall prices; or more than be ſufficient for the Kings houſe, and to carry them to his owne houſe and sheare them. *Fitz. ibid.*

In every of theſe caſes it ſeemeth to be felony in ſuch Purveyor, their deputies and ſervants. And yet a Purveyor, or Taker, &c. may take victuall or any ſuch thing, according to his commiſſion, at reaſonable prices, to the uſe of the Kings majeſtie, and according to the ſtatutes, although it bee againſt the will of the owner. *Br. Parv.* 1. but then he muſt take it by the appriſement of the Conſtable and foure neighbours, &c. *ut ſupra.*

And yet *quære* whether the appriſement ſhall bee made by the Conſtables and foure neighbours, or by the Lords of the townes, or their Bayliffes; and alſo whether the ſaid Indentures ſhall bee made and ſealed betweene the Purveyors and owners, or betweene the Purveyors and Preiſors, &c. for therein the ſaid Statutes doe ſomewhat differ.

Cok. 3 46 But if a Purveior ſhall take any proviſion for the Kings houſe, by force of his commiſſion, and ſhall after ſell away the ſame, now his firſt taking is become tortious, and he puniſhable as a treſpaſſer, if not as a felon, *ab initio.*

If the Kings Hunters or Faulkoners, ſhall take any thing againſt the owners will, without paying for the ſame preſently, it ſeemeth to bee felony, 36. *E.* 3. *cap.* 5.

If the Kings Purveyors, or takers of carriage, ſhall take any thing to ſpare another, they ſhall be impriſoned by the ſpace of two yeares, forſweare the Court, and pay treble dammages to the party grieved, 36 *E. cap.* 3.

If any ſubjects Cater, or other officer, ſhall take any victuals, corne, hay, carriage, or other thing againſt the owners conſent, or do not pay for it preſently, it is felony. *P. Parv.* 1. See the ſtat. 23 *H.* 6. *cap.* 14. here before, *tit. Purveyors, cap.* 44. And *quære* if the felony of ſuch Cater bee not altered herein by that Statute.

1 Mar. cap. 12 2 Ed. 27. Rebellious and unlawfull aſſemblies of any perſons, to the number of twelve or above, &c. their procurers or relievers, it was felony in them all. *Vide hic cap.* 85.

19 H. 4. 13 El. 14. Rogues being by the Iuſtices of peace, at their quarter ſeſſions, adjudged incorrigible and dangerous, and therefore by them baniſhed this Realm, if they ſhall returne againe into any part of this Realme without licence, it is felony.

1 Iac. 7. 7 Ia. 4. Rogues, adjudged (as aforeſaid) incorrigible, or dangerous, ſhall by the judgement of the ſame Iuſt. in their open ſeſſions of the peace, bee branded in the left ſhoulder, &c. And after ſuch puniſhment, if any ſo puniſhed ſhall offend againe in begging, or wandring, contrary to the ſtatutes of 39 *El.* 4. or 1 *Iac.* 7. it is felony.

23 El. 5 Co. 11. 36. 2 Clergy 13 3 H. 6 9. Lamb. 105. 23 H. 8 c. 1. Robbing in the day time of any dwelling houſe, or of any out houſe, belonging and uſed to & with any dwelling houſe, as a *Barn or Stable, &c. (*uncore quere ſi ceo ouſter l'offendor de ſon Clergy*)* if it bee to the value of 5 s. or above, although no perſon bee therein; or to rob any houſe by day or by night, any perſon being therein, and thereby put in feare; or to rob any perſon in any part of his dwelling place, or houſe, the owner or dweller, his wife, children, or ſervants being therein, or in any place within the precinct of the ſame houſe or dwelling place (ſleeping or waking;) or to rob any boothe or tent in a faire or market, the owner, his wife, children, or any ſervant being there within the ſame (ſleeping or waking;) every of

theſe offences are now by the ſtatute made felony, and as penall as Burglary, by the loſſe of the benefit of Clergy. But to breake a houſe in the day time, although he hath a felonious intent, yet if he carrieth away nothing, this is no felony: for there muſt bee an actuall felony done, beſides the breaking of the houſe in the day. And by the report of M. *Daliſon*, theſe ſtatutes ſhall be ſtrictly conſtrued (in favour of life) and according to the bare letter; ſo that if the robbery bee done by day, and there bee in the houſe but one ſervant only, or there be in the houſe, booth, or tent, but a ſtranger or ſojourner only, the fact ſhall not be adjudged an offence againſt theſe ſtatutes, *Cromp.* 118. See Coll 31,32. & 33 Stamf. 126 Lamb. 241

Servants imbeſilling their Maſters goods. See hereof *antea*, *tit. Theft*. 3 Inſt. 4 P. Reg. 48

Souldiers, *ſc.* if any ſubject ſhall paſſe out of this Realme, to ſerve any forreine Prince, &c. not having before their paſſing taken the oath of allegeance, &c. before the officer thereunto appointed, it is felony.

If any Gentleman, or perſon of higher degree, or any Captain, or other officer in camp, ſhall paſſe out of this Realm to ſerve any forrein Prince, &c. or ſhall voluntarily ſerve any forrein Prince, &c. before they ſhall become bound to the Kings Maieſty with two ſureties (before the officer thereto appointed) with condition to this effect; *viz.* not to bee reconciled to the Pope, &c. nor to make or conſent unto any conſpiracy againſt the King, &c. but to diſcloſe all conſpiracies upon knowledge thereof, &c. it is felony. *Ibidem*.

Souldiers entred of Record, and having taken preſt mony, or parcell of their wages of their Captain, if they ſhall not paſſe the ſea, or go with their Captain, or being in the Kings ſervice ſhall depart without licence, it was made felony by the ſtat. 18. *H.* 6. *c.* 19. but ſee *Co.* 6. 27. that this ſtat. of 18 *H.* 6. 19 is now of little force, for that the ancient manner of retaining of Souldiers, to which this ſtatute hath reference, is now altogether changed, &c. And yet if a Souldier who is retained, or hath taken any preſt money, ſhall at this day depart out of the Kings ſervice without licence, it is felony by the Statutes, 7 *H.* 7. 1. & 3 *H.* 8. 5. which two laſt mentioned ſtatutes are yet in force, and are acts perpetuall, *Co. ibid.* And by the ſaid ſtatute of 3 *H.* 8. *c.* 5. ſuch licence of departure muſt be made by the Kings Lievetenant. 18. H. 6. 19 P. Fel. 23. P. Cap. 1 Co. 6. 27

Souldiers, if they ſhall depart without licence, after they have ſerved in the Kings wars, it is felony without benefit of Clergy; and none but the Lievetenant ſhall give a Souldier licence to depart, 2 *E.* 6 *c.* 2. *Co.* 6. 27. See 4. & 5. *P.* & *M. c.* 3. Raſ. 50.

If any mariner or gunner, having taken preſt wages to ſerve the King on the ſea, ſhall not come unto, or ſhall depart from their Captaine without licence, it is felony: yet *quære*, and ſee the ſtatute of 5 *El. c.* 5. at large, for that it doth relate to the aforeſaid ſtatute of 18 *H.* 6. 19. which (as appeareth before) is now of little force. 5. El. 5 P. Fel. 25

1 Souldiers, and Mariners, and all idle perſons, wandring as Souldiers, or Mariners, which ſhall not ſettle themſelves to ſome lawfull courſe of life, but ſhall wander up and downe idly, or beg up and downe, it is felony in them, without benefit of Clergie. 39. El. 17

2 So it is if any idle or wandring Souldier or Mariner comming from beyond

yond the ſeas, or from the ſeas, ſhall not have a lawfull teſtimoniall under the hands of ſome one Iuſtice of peace neere the place of his landing, ſetting down therein the place and time of his landing, and the place unto which he is to paſſe, and a convenient time for his paſſage. 39. *El.* 17.

3 Or having ſuch teſtimoniall, if they ſhall wilfully exceed the time therein limited, above 14 dayes, *Ibid.*

4 Or if they ſhall forge or counterfeit any ſuch teſtimoniall, or ſhall have any ſuch forged teſtimoniall, knowing the ſame to be forged, &c. *ibid.*

5 Or being retained into ſervice after his arraignment, &c. if he ſhall depart within the yeere without licence of his maſter; in all theſe former caſes it is felony in ſuch ſouldier, &c. without any benefit of Clergy.

And yet ſee the ſtatute of 43. *El.* 3. that ſouldiers and mariners, begging, or counterfeiting a certificate from their Captaine, &c. ſhall bee adjudged and puniſhed but as rogues. See *his antea tit. Rogues.*

5.El 3 5.Pet.2 Tranſporting or ſending any live ſheep out of the Kings Dominions, the ſecond offence is felony.

25.E.3.c.3 7.R.2.c.8 It was made felony for any man to carry or to tranſport any wools, leather, woolfels, or lead out of England or Ireland, but ſee other Statutes ſince made concerning the ſame. *An.* 38. *Ed.* 3. *c.* 6, 7 & 14. *R.* 2. *c.* 1, & 5.

Witches, ſee *Conjuration.*

13.E.1.34 3.Pet.12. 18.R.2.c.6 Women, *ſc.* to raviſh a woman where ſhee doth neither conſent before nor after; or to raviſh any woman with force, though ſhe do conſent after, it is felony: and the offender ſhall have no benefit of Clergy. 18. *El. c.* 6. *Br. Cor.* 204. *Vide Dyer* 302.

If a man take away a maid by force, and raviſh her, and after ſhee giveth her conſent, and marrieth him, yet it is a Rape.

Now Raviſhment is here taken in one and the ſame ſignification with Rape, which is a violent deflowring of a woman, or a carnall knowledge had of the body of a woman, againſt her will. 2. *H.* 4. 36. *Fitz. & Cal.* 183.

Stamf. 21 Crom. 100 A woman that is raviſhed ought preſently to levie open cry, or to complaine thereof preſently to ſome credible perſons, as it ſeemeth *Glanvile* 115. See the ſtat. *de officio Coronatoris, & Bract.*

Fleta ſaith, that the complaint muſt bee made within forty dayes, or elſe the woman may not be heard; *lib.* 1. *cap.* 5. But in ſome other Countries this ought to be complained of the ſame day or night that the crime is committed, (*vt dicitur*) the reaſon is, *quia laſſo diei hora crimen ſit ſuſpitiosum. Mirror.*

And yet in an Indictment of Rape, there is no time of proſecution neceſſary, for *Nullum tempus occurrit Regi.* But in caſe of an Appeale of Rape, if the woman doth not proſecute in convenient time, ſhee ſhall bee barred.

Britton 45 Stamf. 24 If a woman at the time of the ſuppoſed Rape do conceive with childe by the Raviſher, this is no Rape, for a woman cannot conceive with childe except ſhe do conſent. *Fitz. ibid.*

12.E.4.6 11.Pari.55 And yet if a man raviſh a woman who conſenteth for feare of death or durſe, this is raviſhment againſt her will, for that conſent ought to be voluntary and free.

And ſuch as are preſent, abbetting, aiding, or procuring another to commit Rape, are principall felons.

If a man and a woman be present, with purpose that the man shall by violence carnally know the body of another woman there also present, against her will, and the man doth the fact in the presence of the other woman, she so present (as well as the man) shall be a principall Ravisher; the man the agent, and the other coadjuvant: And so one woman may bee a principall to the Ravishment of another. *Dod.* 138.

It is a good plea, in an appeale of Rape, to say, that before the ravishment supposed, she was his concubine, as M. *Bracton* saith. Stamf. 24

And yet to ravish a harlot against her will, is felony; for, *licet meretrix fuerit ante, certe tunc temporis non fuit, cum negatia ejus reclamando consentire noluit.* Bract. l. 2. Cromp. 47

Also to take any maid, widow, or wife (having lands or goods, or being heire apparant to her ancestor) against her will unlawfully, is felony; and to receive any such woman so taken, knowing thereof, or to procure and abet the same, is felony; and they shall all be reputed as principals; and as well the principals, as accessaries before the offence, shall all lose the benefit of Clergy. 39. *El. cap.* 9. 3. H. 7. 2. P. Fel. 16

But this act doth not extend to any person taking any woman only claiming her as ward, or bond woman.

The taking away of a maid under sixteen yeeres of age, without the consent of her parents or governors, or contracting marriage with her, or deflowring her, is no felony, but yet shall be punished with long imprisonment, without baile, or with grievous fine. 4. & 5. P. & M. P. Woms 7. 8. See Ca. 11 &c.

But unlawfully and carnally to know and abuse any woman childe under the age of ten yeeres, is felony, although such childe consents before, *Crom.* 47. and the offender shall have no benefit of Clergy. 18 L. 7 P. Fel. 4

Also to take away a mans wife with the goods of her husband, whether it be against her will, or against her husbands will, seemeth to bee felony, by the *Stat. of Westm. 2. cap.* 34. the words thereof are, *De maleribus abductis cum bonis virorum suorum, habeat Rex solitum de bonis sic asportatis.* 13. Ass. Br. Con. 57 Stamf. 94 Cromp. 45

But if the wife take her husbands goods, and so goeth away voluntarily with another man, and with those goods, or delivereth those goods to another man, these two last cases seeme not to be felony. F. Con. 48 Stamf. 17

If any woman bee delivered of any issue of her body, male or female, which, if it were borne alive, should by the Lawes of this Realme be a bastard, and that she endeavour (privately, either by drowning or secret burying thereof, or any other way) so to conceale the death thereof, that it may not come to light, whether it were borne alive, or not, but be concealed; in every such case the said mother so offending, shall suffer death as in case of murther, except she can prove that the childe was borne dead. 21. *Jac. Regis cap.* 27.

Now the mothers proofe that her childe was borne dead, must bee by witnesses. And therefore if the mother will call for no helpe at the time of her labour, but secretly be delivered, and then the childe be found dead, it is a strong presumption against her, that she murdered it; and the rather, for that it is a received opinion, that if the childe were dead in her body, she could not then be delivered without the help of some other.

Acceſſaries. CHAP. 108.

3 H.7.f.10 Stamf.40 Br.Treaſ 19

IN high treaſon there be no Acceſſaries, for all the adviſers, counſellers, perſwaders, and aſſiſtants therein, be principals, and as much as if they were actors or doers: yea, all that ſhall adviſe, counſell, perſwade, command, procure, or hire another to do any treaſon or felonie, (they being indeed the very cauſe of the fact) may well ſeeme as culpable, if not more, than the principall actor, for the rule is, *plus peccat author quam actor*; examples alſo we have hereof in the booke of God, *Gen.* 3. The ſerpent, the procurer of the firſt ſinne, by Gods owne iudgement, had a greater puniſhment, than the woman or man: Againe, 2. *Sam.* 12. 9. *David* is told (from God) that he had killed *Vrias*, whereas he onely commanded *Ioab* to kill him, &c. yet in caſe of Felony our law is otherwiſe. *In treaſon.*

Stamf.40

Note whatſoever offence doth make a man acceſſarie in felony, the ſame, or like offence, maketh him a principall in high treaſon.

3 In.Cor.135 Reins.

But yet it ſeemeth this is to be underſtood of acceſſaries before the treaſon, for receiving, ayding, and comforting a Traitor after the offence (knowing the ſame) was holden to bee but miſpriſion of treaſon, 12. & 13. *El. Dyer* 296. And yet by ſome other authorities, the receiving of traitors after the offence, knowing thereof, is holden to be treaſon: ſee 3 *H.*7. 10: *Br. Treaſon* 19: *Huſſey* Chiefe Iuſtice, and *Cromp.* 42. *b.* who alledgeth the booke called *The Expoſition of the termes of the Law, tit. Acceſſaries.*

Dyer 296

Sir *Edw. Coke*, *L.*57. telleth us, that in the higheſt and loweſt offences there bee no acceſſaries, but all are principals; as in the higheſt offence, which is *Crimen læſæ Maieſtatis*, there bee no acceſſaries; and ſo in the loweſt, as in Riots, Routs, forcible Entries, and other treſpaſſes *vi & armis.*

In caſes of *Præmunire*, there may bee Principall, and Acceſſary, by ſome opinions, 44. *E.*3. & 8. *H.*4. 6. *b. Hals, Br. Præmunire*, 4. 6. *Tamen quære*, for theſe offences ſeeme more like a treſpaſſe than a felony, &c. And upon the ſtat. of 27. *E.* 3. the offenders ſhall forfeit nothing if they appeare at the firſt day; but if they appeare not at the firſt day, then (for their contumacy) they ſhall be out of the Kings protection, and ſhall forfeit their lands and goods to the King, which are as a peine given by the ſtatute, but it is no attainder: alſo if the Principall appeare not, or happen to be dead, yet the other ſhall anſwer; and therefore it ſeemeth that they bee all Principals in caſes of *Præmunire. Br. ibid.* 4.

In petty treaſon there is a principall, and there may be acceſſaries, as there is in felonies.

In felony there be two ſorts of acceſſaries. *In felony*

The one is acceſſary before the felony committed.

The other is acceſſary after the offence done.

But he that is preſent at the time of the felony committed (be it in caſe of murder, robbery, burglary, or larceny) is a principall at this day, if he were either a procurer, or mover, or bee aider, comforter, or conſenter thereto, although at that preſent he doth nothing: ſee before *cap.* 77. *Fol.* 100. *a.* 11. *H.*4. *Br. Corone.* 188. & 228. & *Inditement* 5.

And

And yet concerning murder, note that in every appell, the count is, that every principall *luy comp'a, & feruſt mortalment, &c.* But thoſe words are but words of form, and the ſtriking of him which killeth the partie ſhall be adjudged the ſtriking of all thoſe which command, procure, move, aide, or conſent thereto, when they be preſent; and they which give the ſtroke or wound may be termed principals in fact, and the other being preſent, principals in law, ſee *Plo. fol* 97. *b.* & 100. *a.*

If one being preſent at the killing or robbing of a man, doth nothing, yet would have aided his companion, if there had beene need, he ſhall be adiudged a principall. *Fitz. Coron.* 309. Stamf. 40.

But if one be preſent by chance, and ſeeth when another is ſlaine, or robbed, or when any other felony is committed, and doth not come in compa- nie with the felons, nor is of their conſederacie, although he doth not make any reſiſtance, or diſturbe the felon, or levie huy and cry, nor diſcovereth the ſame, but concealeth it, yet it is no felonie in him, but miſpriſion of felonie, and fineable, as a treſpaſſe. P. Cor. 315. Stamf. 37. 40 b. Cromp. 44. 14. H. 7. 31.

Alſo in ſome caſes a man may be a principall, although he be not preſent at the time of the felony committed: as if *A.* knowing drink to be poyſoned, perſwades *B.* to drinke it, and after *B.* (in the abſence of *A.*) doth drinke it, and dyeth thereof, *A.* is here a principall murderer. *Co.* 4. 44. See other like caſes of poyſoning, *antea tit. Murder. & poſtea ſub hoc tit. Acceſſaries.*

Note that the acceſſary fact in felony, whether before or after, though it be another offence, and diſtinct from the principall fact, yet it is alſo felonie; and they ſhall have the ſame puniſhment which the principall ſhall have.

Note alſo when a ſtatute maketh or ordaineth an Act or offence to be treaſon, or felony, which was not ſo before by the Common Law, and yet the ſtatute ſaith not that the abbettors, aiders, comforters, or conſenters to the doing thereof, ſhall be alſo Felons, yet it ſhall be felony in them, for that they were the cauſes of the doing or committing of the offence, which (it may be) otherwiſe had not beene committed. See *Lamb. pag.* 279, 280. 19 *H. 6. fol.* 47. & 11. *H.* 4. *fol.* 13. *Fitz. Coron.* 228.

And ſo it ſeemeth of receivers, &c. after the offence, *Lamb.* 281. for where a ſtatute maketh any thing felony, it is made as felony to all intents and purpoſes.

The booke called the *Mirrour of Iuſtices*, maketh divers manner of Acceſſaries:

- Thoſe which command.
- Thoſe which counſell.
- Thoſe which conſent.
- Thoſe which are partakers in the gaine.
- Thoſe which know thereof, and doe not diſturbe or hinder the ſame.
- Receivers knowing thereof.
- And thoſe which are preſent at the fact: but theſe laſt (at this day) are Principall, as aforeſaid.

And now our bookes doe divide them into two ſorts: *ſc.* Acceſſaries before the Felony (or fact) and Acceſſaries after the fact.

Before the fact. Acceſſaries before the Felony, are ſuch as ſhall will, command, hire, procure,

Præcipitado. Perſwadendo. Conſulendo Conſentiendo.

cure, move, conſpire, counſell, abet, or conſent to commit any petty treaſon, murder, robbery, rape, burglary, or larceny, but are not preſent thereat; yet all ſuch are thereby felons when the felony is committed.

But here note, ſome differences are to bee obſerved, when the principall and chiefe offender or actor, doth not accompliſh the fact altogether in the ſelfe ſame ſort, as it was beforehand agreed and plotted between him and the acceſſary: and therefore if *A.* command *B.* to lay hold upon *C*, and *B.* goeth and robbeth *C*, this is no felony in *A.* (if he be abſent when the robbery is done) for this commandement might have been performed without any robbery.

1 Cor 3 14

But if the commandement had been to beat *C*, and the party commanded doth kill *C*, or beateth him ſo that he dieth thereof, *A.* ſhall bee acceſſary to his felony and murder; for it is hazard in beating a man, that hee may die thereof.

Plo 475

A. commandeth *B.* to rob *C*, and in attempting this, *B.* killeth *C*, *A.* ſhall be acceſſary to this murder; for in attempting to rob *C*, the commandement of *A.* was purſued, and then when the commandement is purſued, and in the execution thereof another thing falleth out, he which gave the commandement, ſhall be adjudged a party thereto, for that his commandement was the cauſe thereof. *Plo.* 475.

He that commandeth or counſelleth an evill or unlawfull act to be done, ſhall be adjudged acceſſary to all that ſhall enſue upon the ſame evill act, but not to any other diſtinct thing. *ibid.* As if

Plo 475

A. commandeth *B.* to ſtealea horſe, and he ſtealeth an ox; or to ſteale a white horſe, and he ſtealeth a black; or to rob a man by the high-way of his mony, and he robs him in his houſe of his plate; or to burn the houſe of *B*, and he burneth the houſe of *C*; theſe be other acts and felonies than *A.* commanded to be done, and therefore *A.* ſhall not be adjudged acceſſary to them.

But if *B.* ſhall commit the ſame felony which *A.* did command or counſell to be done, though he doth it at another time, or in another place, or in another ſort than *A.* did command or counſell, yet here *A.* ſhall be acceſſarie thereto; for *Mandata illicita recipiunt latam & extenſam interpretationem.* *Vide* B. 4, 66, 67.

Plo 475

As if *A.* doth counſell *B.* to kill *C.* by poyſon, and he killeth him with his dagger, or by other violence; or to kill *C.* by the high-way, and he killeth him in his houſe; or to kill him one day, and he killeth him upon another day; in theſe and the like caſes *A.* ſhall be acceſſary to the murder.

Lamb. 473

A councelleth *B.* to poyſon *C.* and to that end *A* buyeth poyſon, and delivereth it to *B.* who tempereth it in an apple, and delivereth it to *C* with intent to poyſon him, and *C* knowing nothing, giveth the apple to *E* who eateth it, and dyeth thereof; here *A* is not acceſſarie to the murder of *E*, yet it is murder in *B.* *Plo.* 475, 476.

A. counſelleth or commandeth *B* to kill *C*, and after and before he hath killed him *A* doth repent him, and countermands it, charging *B* not to kill *C*, and yet after *B* doth kill *C*, here *A* ſhall not be adiudged acceſſary to the death of *C*, for the Law adiudgeth no man acceſſary to a felony before the fact, but ſuch as continue that minde at the time that the ſame felony is done and executed. *Plo.* 475.

Bee

But if *A.* counſelleth a woman to murder the childe in her bodie (when it ſhall bee borne) and after the childe is borne, and then the Midwife or other perſon, in the preſence of the Mother, and by her commandement, killeth the childe, although it bee done in the abſence of *A.* yet he is acceſſary by his counſelling it before the birth, and not countermanding it *Dyer* 186. Dyer 186 Co. 7. 9. a

A man foreknoweth of a felony intended to be done, and doth conceale it, and ſo ſuffereth it to be effected, this maketh him no acceſſary to the felonie, except he conſenteth thereto; but ſuch concealment ſeemeth to be onely miſpriſion of felonie, and fineable; And yet the rule is, *Qui non prohibet, quod prohibere poteſt, conſentit. Ideo quære.* Lamb. 233. 14. H. 7. 31

Note that in manſlaughter there can be no acceſſary before the fact; for manſlaughter is upon a ſudden falling out. Co. 44.

Note alſo that none ſhall have his Clergie, which maliciouſly commandeth, hireth, or counſelleth any perſon to commit any petie treaſon, or wilfull murder, or to do any robbery, 4 & 5. *P. & M. c.* 4. See *Dyer* 183. 186. & *Co.* 11. 35.

Alſo none which is acceſſary before the fact, or to any felonious burning of any dwelling houſe, or any part thereof, or barne with corne, ſhall have any benefit of Clergy 1. *E.* 6. *cap.* 17. 4. & 5. *P. & M. cap.* 4. See *Co.* 11. *Poulters Caſe.*

No horſe-ſtealer, nor acceſſary thereto, either before or after (ſuch felonie done) ſhall have any benefit of Clergy. 2. *E.* 6. *cap.* 33. & 31. *El.* 12.

After the fact. Acceſſaries after the offence, are they, who knowing that another hath committed a felonie, do felonioully or voluntarily receive or harbour him, or relieve, aſſiſt, comfort, or aid him, whether it be before the attainder of the felon, or after his attainder. *Br. Inditement* 4. Stamf. 41

As to comfort or relieve a felon (before hee is attainted) with money, meat, drinke, or lodging, knowing of the felony, maketh one acceſſarie, 26. *Aſſ. pl.* 47.

So to lend him an horſe to go his way withall, or otherwiſe to be a means of his eſcape. *Fitz. Coro.* 427. Stamf. 41

But to relieve him being in priſon, maketh not a man acceſſarie: Alſo to aide him by his good word, or ſuit for his deliverance, or to ſend a letter for his inlargement, this maketh not a man acceſſarie to the felonie. *Fitzh.* Br. Cor. 19

A felon that goeth under baile, and ſtands bound to appeare for his triall, to receive, harbour, or relieve ſuch a one, with money, or victuall, breedeth no danger of being an acceſſarie, becauſe the felony in theſe laſt caſes cannot be concealed, nor the triall hindred by it. Lamb. 234 Cromp. 42

A felon getteth his pardon, ſuch as ſhall receive or relieve him after, ſhall not be accounted acceſſary; but to receive or relieve him before his pardon obtained, is felony. See *Plo.* 476. yet it ſeemeth upon this pardon, ſuch acceſſarie before ſhall be diſcharged.

A felon is attainted by verdict, confeſſion, or by utlary, to receive, harbour, or relieve ſuch a one, by any perſon dwelling in the ſame Countie where the felon is attainted, it maketh ſuch receiver or aider an acceſſarie to the felonie, although ſuch receiver, &c. did not know of the Felonie, becauſe by the attainder of the felon hee is a Felon of record, whereof F. Cor. 377 Stamf. 94. Dyer 353.

every

every perſon dwelling in the ſame Countie is to take notice. Yet M. *Bracton* requireth a more direct knowledge in the parties to make them acceſſaries; for albeit a Record (and eſpecially the pronouncing of an utlary in the Countie Court) be ſo notorious, that every man may eaſily come to know the ſame; yet were it an over great extremity, that every man ſhould (upon the perill of his owne life) take certaine knowledge thereof; which opinion of M. *Bracton*, M. *Lambert* alſo holdeth to bee very reaſonable.

Lamb. 289.

But a felon attainted by verdict, confeſſion, or utlary, in one County, and another doth receive or aide him in another County, this maketh ſuch receiver, or ayder, no acceſſary to the felony, unleſſe hee did alſo know of the felony.

F. Cor. 377. Vi. Stam. 41

If a *feme* covert ſhall relieve, or receive, and keepe company with her husband, knowing him to be a felon, ſhe is no acceſſarie thereby: for a woman covert cannot be acceſſary in felony to her husband, for ſhee ought to relieve him, and not to diſcover his counſell. But *quare* if this be not to be underſtood of acceſſary after the fact; for if the wife ſhall procure, counſell, or conſpire with her husband to commit any felony, and the husband thereupon ſhall execute the ſame, although the wife bee not preſent thereat, yet the wife may ſeeme to be acceſſary to her husband in ſuch caſe; for M. *Bracton* ſaith, *Vxor virum accuſare non debet, nec detegere furtum ſuum, neque feloniam; conſentire tamen non debet feloniæ viri ſui, neque eſſe coadjutrix. Stamf. 26.*

F. Cor 383. Stam. 26. & 43. b.

Alſo if the wife receiveth, &c. another felon, ſhe is an acceſſary.

A ſervant may be acceſſary to a felony committed by his maſter or miſtreſſe, *ſc.* by relieving or ayding them, or otherwiſe by being a meanes of their eſcape, as it ſeemeth: for maſter *Bracton* ſaith, *Concubinæ & famulæ domus non ſunt in eodem caſu quo uxor, ipſæ enim accuſare tenentur, aut recedere a ſervitio, alioquin videntur conſentire. Stamf. 27. a.*

A ſervant knowing his maſter to be a felon, continueth to doe him ſervice, the ſervant is thereby an acceſſary, *Lect. M. Cook.*

The maſter knowing his ſervant to be a felon, ſtill keepeth him in his ſervice, the maſter is thereby an acceſſary, *ibid.*

A Felon who fled to the houſe of his naturall brother, and the brother ſhut the fore-doore againſt the purſuers, and conveyed the Felon out of his houſe at a backe doore, whereby he got to the Church; this brother was adjudged an acceſſary for it, for he was a meanes of the eſcape.

See Stamf. 42. c. ſuch a matter.

Quare if a Felon flyeth, and commeth to his friends houſe, and his friend ſhutteth the doore againſt him, and yet maketh the purſuers beleeve that he is in the houſe, whereas he eſcapeth, if this make not the friend an acceſſary.

A man hath a Felon in his houſe, and (knowing of the felonie) ſuffereth him to goe his way, and ſo to eſcape, yet this is no felony, for that hee had not arreſted him of the felony before: neither can ſuch an eſcape make him an acceſſary, except he were any meanes of the eſcape.

9. H. 41 Br. Cor. 28 See Be. eſc. 49.

If one doe reſcue him that is arreſted for the felony, he is a principall Felon, and not an acceſſary.

Reſcous.

11. H. 6 Stamf. 43. c.

Receiving, or buying of ſtolne goods, knowing they were ſtolne, maketh not a man acceſſarie to the Felony, unleſſe hee receiveth alſo (or aydeth) the Felon

Buying ſtolne goods

11. Aſſ. 69 35. H. 3. 19 9. H. 4. 41 Stamf. 43. b

Felon himſelfe: yet M. *Crompton* maketh a *quare* thereof, and alleageth ſome caſes to the contrary: See *Cromp. fol.* 41, 42, 43.

But herein there ſeemes a difference betweene a buyer (being a ſtranger to the Felon, and who for valuable conſideration ſhall buy ſuch goods) and a receiver or buyer, who is an adherent or companion to the Felon, or that by covin ſhall receive or buy ſuch goods. See the preamble to the ſtatute, 2 & 3 *Ed. 6. ca.* 24.

A man buyeth ſtollen goods for 5 s. which are worth 20 s. this maketh the buyer an acceſſary, by the opinions of M. *Cromp. fol.* 43. and of Sir *Nicholas Hyde* in his charge at Lent Aſſiſes, at Cambridge, 1629: for it may well appeare by the price, that the ſeller came not truely by them, and therfore it is ſafe to lay hold of ſuch ſellers, as ſhall ſell any thing at any great under value. Cromp. 43.

Taking againe ſtolne goods.

A man purſueth and taketh a Felon that hath ſtolne his goods, and then taketh his goods againe, and ſuffereth the thiefe to eſcape, hee is no acceſſary thereby (by ſome opinions) for hee may *in initio agere civiliter*, or *criminaliter*, at his pleaſure, as M. *Bracton* writeth, *Stam.* 28. *quare tamen*, for M. *Stamf. f.* 40. and M. *Finch, lib.* 2. ſay, that if hee takes his goods againe from the felon to favour him, this is theftboot, (the puniſhment whereof in ancient time was of life and member, though at this day it be puniſhable onely by ranſome and impriſonment:) And yet by ſome it is holden to be felony at this day. The like ſeemeth to bee if he takes his goods againe from the felon, and then favoureth him, and letteth him goe. Br. Cor. 122 Lamb. 286 Crom. 37, 42, 43 P. R. 131 Termes of the Law. 284 Dyer. 301 Pitz. Cor. 351.

But if the party robbed take money or other goods, &c. of the thiefe, to the end hee ſhall favour him, or ſhall not giue evidence againſt him, whereby the thiefe eſcapeth, now is hee an acceſſary to the felony of his owne goods, by good opinion; though ſome other ſeeme to take this for theftboot, and ſo to be puniſhable at this day, onely by ranſome and impriſonment, as aforeſaid. 4. H. 6. Lamb. 288 Cromp. 41 P. R. 131 Br. Cor. 111

If the party robbed, or if hee that ſhall have any goods ſtolne from him, after complaint by him made of the felony (to a Iuſtice of peace or to the Conſtable) ſhall then take his goods againe, or otherwiſe bee compounded withall, and will not proſecute this matter againſt the Felon any further, but will ſuffer him to eſcape, after hee was once ſo charged, and perhaps arreſted for the ſame, *quare* if this maketh not him an acceſſary, for that hee did once *agere criminaliter*, by complaint made to the officer againſt the Felon.

I thinke in ſuch caſe the Iuſtice of Peace ſhall doe well (at leaſt) to binde over both the one and the other to the next quarter Seſſions, or to the next gaole delivery, and then to acquaint the Court with the whole matter.

But if upon huy and cry, a man doe arreſt a thiefe that hath ſtolne another mans goods, and doe then take the goods from the Felon, and ſo let him goe, this maketh him an acceſſary to the Felon, if not a principall Felon. 27. Aſſ. 23 Lamb. 285.

Note in all caſes of an acceſſary after the fact, it is requiſite, that the fact (to which hee is an acceſſary) bee a felony at the very time in which hee becommeth an acceſſary to it: for if *A.* giveth a mortall wound

Stamf. 287. wound to *B.* upon the firſt of March, and *C.* knowing thereof, receiveth, &c. *A.* two or three dayes together, and letteth him goe, and after *B.* dyeth of the wound within the yeare, yet this receipt, &c. maketh *C.* no acceſſarie, becauſe the principall fact was no felonie at the time either of the receipt, or of the letting him goe.

P. Triall. 2. Stamf. 41. f. 83. h. By the ſtat. 2. *Ed.* 6. *c.* 24. acceſſaries may bee to a felonie done in another county: whereas before that ſtatute the common law laid no hold of ſuch acceſſaries, for that thoſe in an other county, upon the triall, could not have cogniſance of the principall offence, &c.

But now by the ſaid ſtatute there ſhall bee a certificate from the *Cuſtos Rotulorum* of the county where the principall ſhall be attainted or convicted, &c. See *antea, tit. Felonie. cap.* 20.

Lamb. 281. Stamf. 44. Note that if an offence be made felonie by ſtatute, although the ſame ſtatute doth not expreſly make mention of procurers, counſellers, abbetters, receivers, conſenters, and aiders, &c. yet they ſhall be taken as acceſſaries (within the compaſſe of the ſame ſtatute) even in the ſame manner, as if it were felonie at the common law.

26. Aſſ. 52. P. Cor. 196. A man may be an acceſſarie to an acceſſarie, as if he ſhal receive, relieve, or comfort him who is acceſſary to a felon, knowing the ſame. *B. Cor.* 104.

P. Appeale. 3 Co. 443. & 9 117. 119 Plo. 98. 99. Cro 34. 107. Although the acceſſarie ſhall be puniſhed, and ſhall have judgement of life and member, as well as the principall which did the felonie, yet the principall (yea all the principals) ought firſt to bee attainted (by verdict, confeſſion, or utlary) before the acceſſary can be charged or put to anſwer (as an acceſſary:) and the acquitall of the principall, is the acquitall of the acceſſarie; for *ubi non eſt principalis, non poteſt eſſe acceſſarius:* but yet the acceſſary ſhall be attached and ſurely kept (and ſhall be committed by the Juſtice of peace, &c.) untill the principall be attached and attainted. See *Stat. Weſt.* 1. *cap.* 14.

But though the acceſſary in felony cannot be proceeded againſt untill the principall bee tried, yet if a man upon ſubtilty and malice ſet a mad man by ſome device to kill another, and hee doth ſo; now for as much as the mad man is excuſed becauſe hee can have no will or malice, the Law accounteth the inciter as principall, though he be abſent, rather than the crime ſhall goe unpuniſhed. 23. *Eliz. Ba.* 57.

And if the principall be attainted, though erroniouſly, that ſhall not availe the acceſſary, but he muſt anſwer, &c. *Co.* 9. 68. *b.* & 119.

Co 443. 44. P. Coe. 166. & 178. Vide. Br. Coro 70. 71. 80. 83. 86. 131. 138. If the principall dye before he be attainted, or if the principal be found not guilty by verdict, or be found by verdict that he ſlew the other in his owne defence, or if after conviction, by verdict, confeſſion, or utlary, and before judgement, he hath his clergy, or getteth his pardon, the acceſſary in all theſe caſes ſhall be diſcharged: but it is not ſafe for the Juſtice of peace to diſcharge ſuch acceſſarie out of Seſſions.

Crom. 34. b. A man killeth another *ſe defendendo*, or by miſadventure, and it is ſo found upon his triall, the acceſſarie ſhall be diſcharged, for that in theſe caſes the principall ſhall not have judgement of death. *Et omne acceſſar. ſequitur ſuum principale.* See *Br. forf.* 13.

Rules concerning felony. CAP. 109.

IF a man committeth felony in the time of one King, hee may bee charged and arraigned for it after, in the time of another King. 1.E.6. Br. Cor. 178.

If a man doe commit murder, ſteale goods, or doe any other felony in the county, and then flyeth into another county, and is taken there and brought before a Juſtice of peace there, he ſhalbe (by the Juſtice) impriſoned in the gaole of the county where he is taken; and after ſhalbe removed by the kings writ into the gaole of the county where he committed the felony. But for thoſe that do informe againſt ſuch felons, the ſaid Juſtice ſhall bind ſuch informers over to appeare, and to give evidence againſt ſuch felons, at the next generall gaole delivery to be holden in that county where the triall of ſuch murder or felony ſhall bee; whither alſo the ſaid Juſtice muſt certifie ſuch information taken by him. 13.E.4.9. Pa. Fcth ſuit 3.

If a man committeth a robberie, or ſtealeth a horſe, beaſt or other goods in one county, and doth carry, leade or drive the goods into another county, it is felony in every county whither hee doth carrie or drive thoſe goods, and the offender may bee indicted, or appealed of felony, or theft, and be arraigned, and have his judgement in any of thoſe counties: but the offender cannot bee appealed or indicted of robbery, but onely in the county where the robbery was done, for it is not robbery in any other county; for robbery muſt bee done to the perſon of a man. *Br. Cor.* 140. *& Inditement* 26. 4.H.7.5. 34.H.8. Br. Cor. 171. Co. 7.2.

If a man doe ſteale another mans goods, and after another ſtealeth the ſame from him, the owner of the goods may charge the firſt or ſecond felon at his choice. 13.E.4.3. 4.H.7.5.

Alſo if a man ſhall deliver cloth to a tailor to make a garment; if the cloth be ſtolen from the tailor, the offender may be charged and indited for ſtealing the ſame, either at the owners ſuit, or at the Tailors. P.R.130. Cro. 70.

Alſo an indictment may be, *Quod bona & catalla cujuſdam hominis ignoti felonice cepit*. See here before *cap.* 103. And any man may in ſuch caſe both informe the court, and by their direction may prefer an indictment againſt the felon, and give evidence to the Enqueſt therein. Dyer 99.

And ſo if the owner be known, but wil not charge the felon therwith, any other perſon, (eſpecially after proclamation made in the Court, that if any wil informe or give in evidence for the king, he ſhalbe heard) may ſafely come in, & may informe the court, prefer an indictment, and give in evidence for the King, againſt the felon without any danger of conſpiracie, becauſe it is for the Kings advantage, to have the forfeiture of the felons goods: yea, in the two former caſes, if the Juſtice of peace ſhall heare of any perſon that can informe any materiall thing againſt ſuch a felon, or againſt any felon, the Juſtice in his diſcretion may ſend for him, take his information, and may bind him to give evidence againſt ſuch felon: for every one ſhal be admitted to give evidence for the King. *Sta.* 163. 35.H.6.15. Fitz. Con. 5. Fitz. 215.2. Stamf. 163. 173.

Alſo if any robbery or theft be committed, and the party robbed or other owner of the goods will not charge the felon therewith, yet it ſeemeth every Juſtice of peace may cauſe ſuch felon (or any perſon ſuſpected for ſuch felony) to bee apprehended, and may examine them thereof; and

and alſo may ſend as well for the party robbed, &c. as for al ſuch other perſons as can informe any thing materiall concerning the ſaid felonie, and may take their informations (upon oath) and if upon ſuch examination they ſhall find cauſe, the ſaid Juſtice may commit the offenders, and bind over the informer. See *antea*, in the other title of *Felony cap.* 20.

3.E.2.c.6. P.Fel.38. & Huy & cry 1. Note alſo (for the better prevention and apprehending of Felons) that upon all homicides, burglaries, robberies, and other felonies, & when men are put in great danger, huy and cry ſhal be levied, and every man ſhal follow the huy and cry, and whoſoever doth not, and be thereof convicted, ſhall be attached to appeare before the Juſtices of Gaole delivery: Alſo it ſeemeth any Juſtice of peace may binde them over to appeare before the Juſtices of gaole deliverie, and that by force of the commiſſion of the firſt *Aſſig.* *Huy & cry.*

3.Ed.1.c.9. Yea, upon any felonie committed, all men generally ſhall be ready (at the commandement of the Sheriffe, and at the cry of the country) to purſue and arreſt felons, upon paine to be grievouſly fined.

13.E.c.13. 27.El.13. 18.E.3.c.12. And ſuch huy and cry and purſuit ſhall be made from towne to towne, and from country to country; and ſhall be made by Horſe-men and foot-men: and in caſe of robbery if (after notice therof given to ſome dwelling neere) none of the felons bee taken within forty dayes after the felony committed, then the whole hundred where the robbery was done ſhall anſwer for the robbery done, and the dammages: but yet the inhabitants of any other hundred wherein negligence, fault, or defect of purſuit and freſh ſuit ſhall happen to be, ſhall anſwer and ſatisfie the one moitie, and halfe of all and every ſuch ſummes of money and dammages. See more here before, *tit. Huy and Cry, and Robberie*, *Eſcape.*

1.Br.Det. 24.

3.R.c.2. Cat.b. And if a man be ſlaine in the day time, (*ſc.* ſo long as it is full day-light) in a towne not walled, and the murderer eſcape, the whole towne where the murder was done ſhall be amerced for this eſcape. But if it be in a City or town walled, then if the murder, &c. were by night, or by day, they ſhall be amerced for the eſcape. *Fit. Co.* 238. 293. 299. 302. *Stam.* 33 *d.* 3 *H.* 7. 1. *P. Coroners* 13.

And if a man be ſlaine in the day time, out of any towne, then the hundred ſhall be charged therewith, and for the inſufficiency of the hundred, all the county ſhall bee charged, &c. *Stamf.* 34 *f.* yet ſee *Dyer* 210. *b.* that the towneſhip ſhall bee amerced for the eſcape, although the murder were committed in the fields of the town, or in a lane, &c. And the Juſtices of peace are to enquire of ſuch eſcapes, and to certifie the ſame into the Kings Bench. *P. Iuſtices* 19.

P.R.156. Alſo every man is a ſufficient Bayliffe and officer to apprehend him that is purſued by huy and cry; and if he bee taken with the thing ſuppoſed to be ſtollen, though he neither be of evill name, nor a ſtranger, yet every man may commit as well ſuch ſuſpected perſon, as alſo ſuch goods, to the towne where they be apprehended, to anſwer to the King according to the law; and the Conſtables of the towne are to carry before ſome Juſtice of peace, as well ſuch priſoners, as alſo the bringers, that the Juſtice may take their information againſt ſuch priſoner, and may examine and commit ſuch offender, or perſon ſo ſuſpected.

But if a man doe levie Huy and Cry upon another without cauſe, both

the one and the other ſhalbe attached, and carried before a Iuſtice of P. to anſwer it, as diſturbers of the peace, and be bound to their good behavior. 5.ep.cap.75.

Note alſo that the Kings officer may breake open any mans houſe, to apprehend any felon, or any perſon that is ſuſpected of felony, being in the ſaid houſe. See hereof *antea. tit. Forcible Entry. cap.* 78. 9.Ed.4.3. Co.3.92.

Alſo the highwayes are to be inlarged, and to be cleanſed of all Buſhes, woods, and trees, &c. whereby ſuch offenders may lurke or eſcape. See *antea, tit. Highwayes, and Robberie.*

And for the better detecting and apprehending of ſuch offenders in great townes being walled, the gates are to be ſhut from the Sun ſetting, untill the Sun riſing: and no man ſhall be lodged in the ſuburbs from nine of the clock untill day, unleſſe his hoſt will anſwer for him: And in all other townes watch ſhall be kept from the Feaſt of the *Aſcenſion*, untill *Michaelmas*, from the Sun ſetting, untill the Sun riſing; And if any ſtranger doe paſſe by them, he ſhall be arreſted vntill the morning, &c. And if they will not obey the arreſt, then all men ſhalbe ready to follow with huy and cry, untill ſuch night-walkers ſhall be taken; And for ſuch arreſt none ſhalbe puniſhed. And the Conſtables ought to ſee theſe watches duely ſet and kept: and as well the Conſtables of Hundreds, and of franchiſes, as alſo the pettie Conſtables of townes, ought to make preſentment to the Iuſtices of peace at their ſeſſions, (and to all other Iuſtices thereto aſſigned) of the defaults of watches, and of ſuch as lodge ſtrangers, for whom they will not anſwer: and the Iuſtices of peace at their Seſſions ſhall puniſh ſuch as bee found in default. *P. Watch.* 2. See *antea, tit. Watch*, that every Iuſtice of peace may cauſe theſe watches to be duly kept. 13.Ed.1.4. P. Watch 11. 5.H.7.5.a. Lamb. of. of a Conſtable.

The forfeiture for Felonie. CAP. 110.

THe puniſhment of every perſon attainted of felonie, is fourefold; *ſc.* Co.4.124. Co.l.41.

1 The offender ſhall loſe his life, and be hanged betweene heaven and earth, as unworthy of both.

2 He ſhall loſe his blood, as well in regard of his anceſtrie, as of his poſteritie; for his blood is corrupted, ſo as he hath neither anceſtour, heire, nor poſteritie. See *Co.11.1.b. & Lit.* 745. *& c. Co.l.* 391, 392. Ibid.

3 He ſhall forfeit his fee-ſimple lands (from the time of the offence, &c.) wherein the King ſhall have *Annum, diem, & vaſtum*, to the intent that the offenders wife and children ſhall be caſt out thereof, his houſes raſed, his trees rooted up, his meadowes plowed up, and all his Land waſted and deſtroyed. And after the yeare, day, and waſt, the lands ſhall goe by eſcheat to the cheife Lord of the fee: (But yet the Lord may fine with the King for all *ſc.* for the yeare, day, and the waſt, and ſo have the land preſently, *quære* if the Lord may enter, it ſeemeth he cannot: ſee the ſtat. 17. *E.* 2. *c.* 16. *& Stam. de Prer.* 49. *Fitz. Tre.* 48. *& Br. Reſeiſ.* 36. Ibid. Stat Pro. Reg. cap.16.

4 The offender ſhall forfeit and loſe all his goods and chattels from the time of his attainder onely.

The King ſhall have all the goods of felons which be condemned, and which bee fugitive, whereſoever the ſaid goods be found, *ſc.* all their goods moveable and unmoveable, their corne growing, and the profits of their fee-ſimple lands for a yeare and a day, and the iſſues and profits of their

their other lands, during their lives, and all their debts due to them by ſtatute, recognisance, obligation, or ſimple contract, and money due upon accounts: and the King, or he to whom the King ſhall give ſuch debt, ſhall have an action therefore in his owne name, and yet the King ſhall not pay ſuch debts as the ſaid felons did owe.

Co. l. 3. 2. F. Cor. 317. 334. 10 H. 6. 47. Dyer 30.

Vncore le offender ne forfeiture ſes terres pur Manſlaughter; Nec in caſes de Homicide per Miſadventure (in leſans de ſon loyall.) Nec pur Homicide ſur Neceſſity, ſur ſe Defendendo.

By the Common law, after a felon be found guiltie before the Coroner, or that it be found before the Coroner, that he did flie for the felony, there the Coroner, Sheriffe, Vndersheriffe, or Eſcheator, &c. may (for the King) ſeiſe the goods of the felon, and preiſe them by an Enqueſt, &c. before his attainder; for by ſuch thing found before the Coroner, the goods of the felon are forfeited without further enquirie, or triall of the felon: and yet the officer may not in ſuch caſe carry the felons goods away, but (after preiſement as foreſaid) muſt leave them in the cuſtody the of felons neighbours where he dwelt, or in the cuſtody of the towne where the goods were, to be anſwered to the King: and if he were indited of felony, yet his goods ſhould not be removed out of his houſe until he were attainted, but the officer was to ſeiſe and preiſe them, and to take ſurety of the party that they ſhould not be imbeſelled; and if the party would not find ſuretie, then the officer was to deliver them to the neighbours, & the ſaid goods ſhould be kept by his neighbours all the time of his imprisonment; and the felon muſt have had reaſonable maintenance of his goods for him and his familie, untill he were convicted and found guilty of the felonie, and then the remainder was the Kings. See 25. *E.* 3. *c.* 14. *P. Ind.* 5.

21. Aſſ. 96. Br. forf. 33. 43. F. 3. 24. Br. forf. 7. 7. H. 4 fo. ult. Stamf. 192.

P. Sherif. 24.

And now by the ſtatute made 1. *R.* 3. *c.* 3. it is ordained, that if any Sheriffe, &c. or other perſon, doe take or ſeiſe the goods of any perſon arreſted and impriſoned for felony, or ſuſpition thereof, before the ſame perſon be convicted or attainted of ſuch felony, or that the ſame goods be otherwiſe lawfully forfeited, he ſhall pay to the party grieved the double value of the goods ſo taken or ſeiſed, &c. which ſtatute ſeemeth to be but a confirmation of the common Law, ſaith M. *Stamf. fo.* 193. ſave that it giveth the party grieved a more ample recompence, and more ſpeedy remedy, than the common law before did: ſo that before attainder, or conviction, the goods of a felon that is in priſon, ought not to be ſeiſed, nor committed to the Towne, or taken out of the felons houſe or poſſeſſion: for a man attainted of felony, ſhall forfeit ſuch goods as he hath at the time of the attainder, and not at the time of the felony committed: and a felon or traitor, after the felony or treaſon committed, and before attainder or conviction and judgement given upon him, may ſell (*bona fide*) for his ſuſtenance, &c. his goods or chattels, be they reall or perſonall; but yet they may not diſorderly ſell or waſte their goods. Therefore it ſeemeth, that the officer may ſtill take ſurety that the goods bee not imbeſelled, and for want of ſureties, may ſeiſe them, and preiſe or value them, and then deliver them to the Towne ſafely to be kept, untill the offender be convict, or acquitted. See *Br. forf.* 44. where M. *Brooke* delivers his opinion, that this order ought to be obſerved of every one which committeth felony, untill he be attainted.

P. Indict. 5. Stamf. 193.

Br. forf 38. Co. 8. 171. Stamf. 192.

Nay after attainder, if they ſhall grant their goods or lands, it ſhall bind all perſons except the King, and Lord by eſcheat; but againſt them ſuch grant is void. And as to their lands, relation is to be had to the day of the felony committed, by the attainder, by verdict, utlary, or otherwiſe: *Stam. de prærog.* 48.

After the conviction of a felon (if the goods were in the felons poſſeſſion at the time of his conviction) the town preſently ſtands charged therewith, & ſhall anſwer for the loſſe, or impairing of them, though the goods were never ſeiſed by the officer, nor delivered to the towne, (except they can ſhew what other perſon hath detained thoſe goods, and that they could never have poſſeſſion of them; which exception is by ſtat. of 31. *E.* 3. 3. *P. Eſtreats* 3.) So that it ſhall be ſafe for the towne to ſeiſe ſuch goods (in whoſe hands ſoever they be found) preſently after the conviction of any felon, and then ſhall it be ſafe for them to doe it by inventory, taken in the preſence and by the teſtimony of ſome other honeſt men. Yet *quære*, for by the opinion of *Priſott*, none may ſeiſe any goods for the King, but an officer who is accountable to the King. 49. *H.* 6. 1. *Br. Reſeiſ.* 15. P. Cor. 366. Stam. 193, 194.

Conviction. Conviction in felony, is where a man (being indited of felony) upon his arraignment ſubmitteth himſelfe to be tried by the Countrey, and then is found guilty by the verdict of twelve other Jurors; or ſhall confeſſe the offence upon his triall, or is outlawed for the ſame (*ſc.* is pronounced outlawed of the felony, at the County Court.) Alſo conviction in all other offences (by the Common law) is where the offender is indited, or the offence preſented by a Jurie, whereto the offender pleadeth, *Not guiltie*, and is found guilty by the verdict of twelve other Jurors, or by a ſecond Jurie, &c. Co. 11. 30. 52. P. R. 179. Dyer 275. Co. 11. 36.

And yet a Popiſh Recuſant indicted therfore (at the generall gaole delivery, or quarter Seſſions for the peace) and proclamation there made, commanding the offender to render his body to the Sheriffe of the ſame county, &c. if at the next gaole deliverie, or Seſſions, the ſame offender ſo proclaimed ſhall not make apparance of record, ſuch default recorded, ſhall be a ſufficient conviction in law of the ſaid offence. 29. *El. cap.* 6. & 3. *Iac.* 4. *P. Recuſants* 13. 42.

And ſometimes (in other caſes) upon proclamation made, if the partie ſhall not appeare and yeeld himſelfe, he ſhall be thereby convicted or attainted of the fact, &c. ſee the ſtat. 5. *H.* 5. *cap.* 6. 11. *H.* 6. *cap.* 11. 13. *H.* 4. *cap.* 7.

And (by divers Statutes) you ſhall finde that an offender may be convicted (out of Court,) either upon the view and Record of the Juſtice of peace, or by the confeſſion of the offender, or upon examination of witneſſes before one or two Juſtices of peace, and that out of the Seſſions. See here *ante* 4 *cap.* 66.

And ſomtimes, conviction may be in the Seſſions, upon the certificate, or preſentment of the Juſtices of Peace. See *tit. Ale-houſes, and Highwayes.*

And ſometimes by confeſſion, or examination of witneſſes in court, without any verdict taken. See *Crom.* 130, 131. *E. Confeſſ.* 32.

And in ſome caſes conviction ſhall be taken for attainder. See *Co.* 11. 59. 60.

The

Cor.11.58. Stamf.138. & 185 b. Co.l.390.b. The difference betweene attainder, and conviction, in caſe of felony, is, the perſon attainted hath judgement of death given upon him: the perſon convict, before judgement prayeth his Clergie, and hath it, &c. Or after verdict, confeſſion, or outlary, the felon is ſaid to be convicted, till judgement be given.

And ſo a man is properly ſaid to be indited, when the offence is firſt found by the great Enqueſt, or other Jurie of Enquirie.

2 Convicted, when the offender, having put himſelfe upon his triall, is found guiltie by a ſecond Jurie; here he is convict, before he hath judgment.

3 Attainted, when (after ſuch conviction) Judgement is given againſt the offender, and thereby his lands are forfeited, and his blood corrupted, *Co.l.391.*

Examination of felons, and evidence againſt them. CAP. III.

1.& 2.Ph.& M.10. P.Inſt.108. WHen any perſon ſhall be brought before a Juſtice of peace for murder, manſlaughter, or any other felony (wherewith the Juſtice of peace may deale) or for ſuſpition thereof, before the Juſtice ſhall commit or ſend ſuch offender to priſon, he ſhall take,

1 The examination of ſuch offender.

2 The information of ſuch as bring him, *viz.* he ſhall take their examination, and information of the fact, and circumſtances thereof: And ſo much thereof, as ſhall be materiall to prove the felony, he ſhall put in writing within two dayes after the ſaid examination.

3 Alſo the ſame Juſtice of peace ſhall bind all ſuch by Recogniſance, as doe declare any thing materiall to prove the felony, to appeare at the next generall gaole delivery (to be holden where the triall of the ſaid felony ſhall be) then and there to give in evidence againſt ſuch offenders. See *antea, tit. Felony. cap.20.*

4 And then the ſame Juſtice ſhall make his *Mittimus*, to carry the offender to the gaole.

1.& 2.Ph.& M.13. P.Inſt.107. Or if ſuch offender be baileable (and that there be two Juſtices of peace preſent together, the one of them being of the *Quorum*) after ſuch examination and information taken, and put in writing, the ſaid Juſtices of peace may baile ſuch priſoner.

5 And the ſaid Juſtice or Juſtices of peace ſhall certifie at the next generall gaole delivery, ſuch examination, information, recogniſance, and bailement.

And if any Juſtice of peace ſhal offend in any thing contrary to the true intent and meaning of either of theſe ſtatutes of 1.& 2. and 2.3. *Ph.& M.* the Juſtices of Gaole delivery in their diſcretions, ſhall fine every ſuch Juſtice of peace.

And yet for pettie Larcenies, and ſmall felonies, the offenders may be tried at the quarter Seſſions, and the examinations and informations may be certified thither, and the Informers bound thither. See hereof *antea tit. Felony cap.20. & ſtat.3. H.7.cap.3. & Fit.251.f.*

The

The forme of the Recognisance, ſee *poſtea tit. Recognisances, cap.* 123.
The forme of the *Mittimus*, ſee *poſtea tit. Mittimus, cap.* 125.
The forme of the Bailement, ſee *poſtea tit. Bailements, cap.* 127.

If the offender upon his examination before the Juſtice of Peace, ſhall confeſſe the matter, it ſhall not be amiſſe that the offender ſubſcribes his name or marke under ſuch confeſſion made by him.

If the offender confeſſeth the felonie before the Juſtice of Peace, & notwithſtanding he letteth him goe, without committing or bailing of him; this ſeemeth to be a voluntary eſcape, and ſo felony in the Juſtice. *Crom.* 39.44.

Alſo if any perſon ſhall be brought before a Juſtice of Peace, and charged with any manor of homicide (other than that which ſhall be done in the orderly execution of judgement) as if it were done *ſe defendendo*, or by caſualty (which are not felonies of death) or done by an infant, a luna- Lamb. 229.
tike, or the like; yet it is the Juſtices parr, and ſafeſt for him to commit the offender to priſon, or at leaſt to joyne with ſome other in the bailement of him (if the cauſe will ſuffer it) to the end the party may de diſcharged by a lawfull triall. See *antea, tit. Homicide.*

The like is to be done, where any felony is committed, and one brought before the Juſtice of peace upon ſuſpition thereof, though it ſhall appeare to the Juſtice, that the priſoner is not guilty thereof: For it is not fit that a man once arreſted and charged with felony (or ſuſpition thereof) ſhould be delivered upon any mans diſcretion, without further triall. *Vide Crom.* 34. *& the cap.* 106. *in fine.*

Evidence.

The Juſtices of peace have authority (by the words of the ſtatute) to 1. & 2. Ph. & M. 13.
by the wife. binde by Recognisance all ſuch as do declare any thing materiall to prove the felony, to give evidence againſt the offender: And yet the wife is not to be bound to give evidence, nor to be examined againſt her husband; for by the lawes of God, and of this Land, ſhe ought not to diſcover his counſell, or his offence, in caſe of theft (or other felony, as it ſeemeth.) See *Stamf.* 26. *b.* Nay, I have knowne the Judge of aſſiſe greatly to diſallow, that the wife ſhould be examined, or bound to give in any evidence againſt others in caſe of theft, wherein her husband was a party, and yet her evidence was pregnant and materiall to have proved the felony againſt others that were parties to the ſame felony, and not directly againſt the husband. See *antea, tit. Acceſſarie.*

And Sir *Ed. Coke*, *l.* 6. *b.* ſaith that it hath beene reſolved by the Juſtices, *termino Paſch.* 10. *Ia.* that the wife cannot be produced, either againſt or for her husband, *quia ſunt duæ animæ in carne una.*

And yet it was reſolved by the Judges (in the caſe of the Lord *A.*) that in criminall cauſes the wife may be a witneſſe againſt her husband, eſpecially where ſhee is the party grieved: But that in civill cauſes ſhee cannot. 7. *Caroli Regis.*

The Childe.

But for children, I finde in the booke of the diſcovery of Witches at Lancaſter aſſiſes, *Anno Dom.* 1612. that the ſonne and daughter of *Elizabeth Device* a witch, were not onely examined by the Juſtices of peace againſt their ſaid Mother, and the ſaid examinations certified and openly read upon the arraignment & trial; but the daughter alſo was commanded, and did give open evidence againſt her mother then priſoner at the Barre. E. 3. b. 4 2. G. 1. 51.

I

I finde further in the ſaid booke of the diſcovery of Witches, that two children, the one about nine yeares of age, the other of fourteene, did upon their oathes give evidence againſt the priſoners upon their arraignment. See the booke, *f. 4. Iab. K. 4. ab.* The like was done at Cambridge, at Lent Aſſiſes, *Anno Dom.* 1619. before Sir *Henry Montague*, Lord chiefe Juſtice of the Kings Bench. *By an Infant.*

Accuſation or information by one that is decrepit or unable to travell, is good, and may be taken by the Iuſtice of peace upon oath, and certified at the next generall gaole delivery, or Seſſions of the peace, as the caſe ſhall require.

If one be an accuſer vpon his owne knowledge, ſight or hearing, and hee ſhall utter the ſame to another, that other may be an accuſer. *Dyer 99.*

Accuſation by an approver. See hereof *tit. Bailement cap. 114.*

And note, that an offender confeſſing any felony (upon Indictment or otherwiſe) againſt himſelfe, may alſo accuſe others of the ſame felony; and ſuch accuſation may be taken by the Iuſtice of peace, &c.

Two informe againſt another in matter of felony, and they varie in their tales, (*viz.* in the day and place, when and where the Felonie was committed) ſuch information is not much to be credited: See the ſtorie of *Suſanna.* *By perſons diſcredited.*

Rom. 100. He that is examined, if part of that he ſpeaketh be proved to be falſe, he is not to be credited in the reſidue of his information; and therefore wee ſhall find in *16. Ed. 4.* that a man who was produced as a witneſſe in the Chancery, in his depoſition he was found to ſweare falſly in part, and thereupon his teſtimony was utterly rejected.

A man attainted of perjury, and the King pardons and reſtores him, &c. *quære* whether ſuch a perſons information ſhall bee allowed againſt a priſoner; for the old ſaying is, Once forſworne, ever forlorne.

A man attainted of conſpiracie or forgerie, ſhall not be received to give evidence, or to be a witneſſe. See *Cromp. 127. b.*

But if one be brought before a Iuſtice of Peace upon ſuſpition of felony, although the information againſt the priſoner ſhall be by ſuch witneſſes, yet it ſeemeth ſafeſt for the Iuſtice of Peace to take their information for the King, and to binde them over to give evidence, &c. and to commit the partie ſuſpected, and upon the triall to informe the Iuſtices of goale delivery concerning the credit of thoſe witneſſes.

Concerning theſe accuſers or witneſſes, I have further ſeene two old verſes in theſe words;

Conditio, ſexus, ætas, diſcretio, fama,
Et fortuna, fides: in teſtibus iſta requires.

And yet in caſe of felony, any man (though of no worth) may bee allowed for a witneſſe or proofe.

By Gods law one witneſſe ſhall not be ſufficient againſt an offender, for any ſinne, treſpas, or fault; *Deut. 19. 15.* And to the ſame purpoſe was the ſtat. *5. H. 8. c. 14.* And yet now by our law one witneſſe is ſufficient, where the triall is by a Iury, for they are all ſworne to trie the particular matter wherewith the defendant is charged. So alſo one witneſſe is ſufficient to convict an offender before the Iuſtice of peace in diuers caſes. *Vide hic cap. 66.*

When

When a priſoner ſhal be brought before the Juſtice of Peace, for ſelony, or ſuſpition thereof, but they that bring him, or firſt complayned of him, will not, or cannot informe any materiall thing againſt the priſoner. See what the Iuſtice of Peace ſhall or may doe, *hic cap.* 20 & 109.

And it ſeemeth fit that the parties grieved be bound not onely to give in evidence, but alſo to prefer a Bill of indictment againſt the priſoner: and the other perſons which can informe any materiall thing to prove the felony, may be bound to give in evidence only.

And for that men ſhould be the readier & more willing to give evidence againſt felons, the ſtatute made 21.*H.*8 *cap.* 11. hath enacted, That if any man hath any goods ſtolne from him, if the felon be therof indited, and after in any ſort attainted, or arraigned, and thereof found guilty, by reaſon of evidence given by the party robbed, or owner of the ſame goods, or by any other by his procurement, (though the thiefe be not hanged, nor have judgement of death) then the party robbed (or owner of the goods) ſhall bee reſtored to his ſaid goods, by a writ of Reſtitution, though he never made any freſh ſuit or huy and cry. Before which ſtatute the party robbed could haue no reſtitution, without ſuing of an appeale againſt a felon, and freſh ſuit made. *Reſtitution.* P. Reſtit. 11. Br. Eſtray 8. Doct. & ſtud. 64. Stamf. 165. 166.

Alſo if the felon ſhalbe outlawed upon the indictment by means of the party robbed, or owner of the goods ſtollen, he ſhall have reſtitution of his goods, by a writ of Reſtitution, *vt ſupra Ba.* 76.

And note that the Juſtices before whom any ſuch felon ſhall bee found guilty (or otherwiſe attainted by reaſon of evidence given by the party ſo robbed, or owner, or by any other by their procurement) have power to award a writ of Reſtitution for the money or goods ſtolne, directed to the party in whoſe hands the ſame goods are, &c. 21.*H.* 8.*cap.* 11. *Br. Reſtit.* 22.

Alſo the executors of the party robbed ſhall have reſtitution by force of this Statute, *viz.* upon evidence given by them, or by their procurement againſt the felon, whereby the felon is attainted or found guilty. Co. 4. 82. Benl. 3. Eliz.

If a theefe doe rob or ſteale goods from three men ſeverally, and he be indicted of the robbing or ſtealing from one of them, and arraigned thereupon, in this caſe though the other two would give evidence againſt the offender, yet ſhall not they have reſtitution of their goods, by the meaning of that ſtatute, for the felon is not attainted of any other felony, ſaving of that whereof he was indited. But if he be indited of all the three robberies or felonies ſeverally, and arraigned upon one of them, and found guilty by the evidence given by one of the parties robbed, &c. Yet ſhall hee bee after arraigned upon the other two inditements, to the intent he alſo may be found guilty, by the evidence of the other two perſons robbed, and that ſo they may have reſtitution of their goods ſtolne, according to the meaning of the ſaid ſtatute. Stamf. 164. P. R. 162.

And if a man doe ſteale goods at diverſe times from ſeverall men, and he is after attainted at the ſuit of one of them onely, for the goods ſtolne from him, but is not attainted at the ſuit of the others, by this attainder the felon ſhall forfeit to the King not onely his owne goods, but alſo the goods ſtolne from thoſe other, at whoſe ſuit he was not attainted, though the felon had no propertie, but onely a poſſeſſion of thoſe goods; and the 44. Ed. 3. 16.

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property of the goods which remaineth in the right owner in this case is forfeited (by the owner) to the King, for default of the owners pursuing the felon.

Also if there be divers of the theeves, and but one of the principalls attainted (as before) yet it seemeth the party robbed shall have restitution.

But in these and the like cases of restitution, if the felon hath sold the goods in a Faire or Market overt, and after beeattainted of the felony (upon evidence given by the party robbed) there the owner shall not have restitution: For by alienation in faire or Market overt, the property of goods stolne are altered, 12. *H.* 8. 10. *b.* Yet if hee that bought the goods in market were privie to the felony, such sale shall not alter the property, *quia particeps criminis*: See 33. *H.* 6. 7. *Co.* 3. 78. *Vide antea, tit. Horses.*

A man shall have restitution of money stolne, &c. though it cannot bee knowne. *Br. Restit.* 22.

But if a man hath a horse or other goods stolen from him, and knoweth not by whom, if the felon waiveth the goods, flyeth and escapeth, and the Kings officers, or the Lord of the Manner, &c. seiseth them the party robbed shall have no restitution, for that he cannot indite and attaint the felon: And yet if the felon had not the goods in his possession, and with him at the time when hee fled (but had formerly left them elsewhere, *sc.* in the theefes owne house or in any other mans house, or in the custody of any other, or had hid them) then are they no waived goods, nor forfeit, but that the owner may take them againe whersoever hee findeth them without restitution awarded. *Co.* 5. 109.

Also in the aforesaid book of Discovery of Witches, I observe one other thing, *viz.*

That Examinations taken by Justices of peace in one County, may be (by them) certified into another County, and there read and given in evidence against the prisoner. *T.* 2. 3. And in such cases the examinations would be taken upon oath.

Cromp. 193. The offender himselfe shall not bee examined upon oath, for by the Common law, *Nullus tenetur seipsum prodere*: Neither was a mans fault to bee wrung out of himselfe (no not by examination onely) but to bee proved by others, untill the stat. of 2. & 3 *P. & M. cap.* 10. gave authority to the Justices of peace to examine the felon himselfe. *Examinations certified.*

But it seemeth convenient, in cases of felony especially, that the information (of the bringers and others) which the Justices of peace doe take against the prisoner, be upon oath: otherwise upon the triall of the prisoner, such Information or Examination, taken by the Justice of peace shall not be read or delivered to the Jurie, nor given in evidence against the prisoner upon his triall. And so was the direction of sir *Edward Coke*, late Lord chiefe Justice (5. *Iacobi*, at Cambridge Sommer Assises) upon the triall of a felon: for (said he) in case of a trespasse to the value of two pence, no evidence shall be given to the Jurie, but upon oath, much lesse Cromp. 194. where the life of man is in question. See *Lamb. pag.* 210. that hee hath heard the opinions of other Justices of Assise delivered accordingly. *Upon Oath.*

Also if the Informers be examined upon oath, then though it happen they

they ſhould die before the priſoner have his triall; or if they ſhall not appeare upon the recogniſance, and give evidence againſt the priſoner (being laboured perhaps to abſent themſelves,) yet may their information be given in evidence, as a matter of good credit.

Alſo it is found by experience, that without oath many Informers will ſpeake coldly againſt a felon before the face of the Juſtice of peace; yea and will alſo ſpeake very ſparingly and coldly, upon their evidence given before the Judges of Aſſiſe, as I have obſerved in ſome; had they not been urged with their formed information taken upon oath. For the labouring (by the offender and his friends) to ſuch as are to informe and give evidence (both before the matter commeth before the Juſtice of peace, and after) is now growne over common and uſuall.

Alſo M. *Brooke* (tit. *examination* 32.) is of opinion, that every examination ought to be upon oath: And ſo alſo is the practice of the Juſtices in the higher Courts at *Weſtminſter*, in all their examinations of Summoners, Viewers, Sheriffes, Clerkes, and other officers, &c. Lamb. 205.

And here let me admoniſh all ſuch as are to informe or beare witneſſe againſt a priſoner, or any offender, before a Juſtice of peace, or other Magiſtrate, That they be well adviſed what they teſtifie upon their oathes, knowing that in ſuch caſes, if either they ſhould not ſpeake the truth, or ſhould conceale any part of the truth, they ſhould offend againſt God, the magiſtrate, the innocent, the common-wealth, and their owne ſoules *&c.* againſt

God, in deſpiſing of him, and belying the truth.

Magiſtrate, in deceiving of him, and cauſing him to doe injuſtice.

Innocent, in ſpoyling him of his name, goods, or life.

Common-wealth, *&c.* if the partie bee nocent or guilty, and hee clears him by falſe witneſſe.

His owne ſoule, for it is perjurie in him, at leaſt, in the preſence of God and good men.

Where information, Evidence, or proofe of Witneſſes ſhall be taken againſt the King. CAP. 112.

IT ſeemeth juſt and right, that the Juſtices of peace who take information againſt a felon, or perſon ſuſpected of felony, ſhould take and certifie as well ſuch information, proofe, and evidence, as goeth to the acquitall or clearing of the priſoner, as ſuch as make for the King, and againſt the priſoner: for ſuch information, evidence, or proofe taken, and the certifying thereof by the Juſtice of peace, is onely to informe the King and his Juſtices of gaole delivery, &c. of the truth of the matter.

And ſir *Ed. Coke* (at lent aſſiſes at Bury, 5. *Iacobi*) adviſed a Coroner that he ought to have done accordingly, (as I have heard.)

But *quere* if the Juſt. of peace, or Coroner, may take upon oath ſuch information, evidence, or proofe as maketh againſt the king: it ſeemeth no. Crom. 118.

Vpon triall of felons before the Juſtices of gaole delivery, the ſaid Juſtices wil often heare witneſſes and evidence which goeth to the clearing and acquitall of the priſoner, yet they will not take it upon oath; but doe leave ſuch teſtimonie and evidence to the Jurie, to give credit,

or

or to thinke thereof, as they shall see and finde cause.

Popham Chiefe Justice (at Cambridge Assises *anno Eliz.*) committed one to prison, who upon the triall of a felon, called out, That he could give evidence for the Queene, and when he was sworne, he gave evidence to acquit the offender.

7 Armour. But by the statute of 31. *El. cap.* 4. it was enacted, that such persons as shall bee impeached for any offence made felony by that statute (being against imbezelling of armour, &c.) shall be admitted to make any lawfull proofe that they can, by witnesse or otherwise, for their discharge and defence.

fum. 141. b In 7. *H.* 4. we shall finde, that one of the Sergeants as *amicus Curiæ*, and to informe the Court (that they should not erre) did shew his opinion to the benefit of a prisoner, upon the insufficiencie of the indictment: the like is to be seene in *Brookes* Case, 28. *Eliz. in Banco Regis*, Co. 4. 49.

Co. 4. 39.

Causes of suspition. Cap. 113.

NOw upon the examination of Felons, and other like offenders, these circumstances following are to be considered:

1 His name, *sc.* if he be called by divers names.

2. Quality. His parents, if they were wicked, and given to the same kinde of fault.

His ability of body, *sc.* if strong and swift, or weake, or sickly, not likely to doe the act.

His nature, if civill or hastie, witty and subtill, a quarreller, pilferer, or bloody minded, &c.

His meanes, if he hath wherein to live, or not.

His trade; for if a man liveth idely or vagrant (*nullam exercens artem nec laborem*) it is a good cause to arrest him upon suspition, if there haue beene any felony committed. 7. *E.* 4. 20. *Br. ſx. imp.* 22.

His company, if ruffians, suspected persons, or his being in company with any the offenders. 7. *E.* 4. 20.

His course of life, *sc.* if a common Alehouse-haunter, or riotous in diet, play, or apparell.

Whether he be of euill fame or report.

Whether he hath committed the like offence before, or if hee hath had a pardon, or beene acquitted for felony before, *Nam qui semel est malus, semper præsumitur esse malus, in eodem genere mali.*

So if hee hath formerly abjured the Realme, or beene outlawed for felony, although he hath his pardon.

If he hath any blood about him, on his apparrel, or that his weapon be bloody.

3. Markes. It any of the goods stolne bee in his possession.

or If any of the apparell of the party murdered bee in his possession.

Signes. The change of his countenance, his blushing, looking downwards, silence, trembling.

His answers doubtfull or repugnant.

If he offered agreement or composition.

If he hath laboured his neighbours not to speake thereof.

The measure of his foot, or horse foot.

The bleeding of the dead body in his presence.

If, being charged with the felony, or called theefe, hee saith nothing. *F. Cor.* 24.

If he fled, *fatetur facinus, qui judicium fugit. Co.* 11. 60.

If he hides himselfe, or takes sanctuary.

If hee lyes lurking in a place where hee hath nothing to doe.

If he were the first that found the party murthered.

4. The fact. Place, *&c.* if convenient for such act, as in a house, in a wood, dale, &c.

Time, the yeare, day, houre, early or late.

Where the offender was at the time of the fact, and where the day or night before, his businesse and company there, and witnesse to prove all these.

Manner, if willingly, by chance, or necessity,

5. the cause. If former malice.

If to his benefit, or what hope of gaine.

If for the eschewing of any hurt or danger.

6. The persons. *Agens*, if Principall or Accessary, Enfant, Lunatique, &c.

Patiens, if against the King, Common-wealth, Magistrate, Master, &c.

A felon brought before a Justice of Peace accuseth others, it is sufficient cause for the Justice to grant out his Warrant for the rest. See *postea.*

A man going to execution accuseth another of felony, it is sufficient cause to arrest him. F. Cor. 318

Fama. *Communis vox & fama*, that he did the offence, is sufficient cause of suspition: *&c.* where such a felony is done, otherwise not. Br. Faus le prist. 16.

But yet for the better conceiving what may breed or giue just cause of suspition, marke some of M. *Bractons Rules.*

Oritur suspitio ex fama; Fama vero quæ suspitionem inducit, oriri debet apud bonos & graves, non quidem malevolos & maledicos, sed provides & fide dignas personas: idque non semel, sed sæpius: vanæ autem voces populinon sunt audiendæ. Stamf. 97.

And therefore where the common proverbe is, *Vox populi, est vox Dei*, it should be, *Vox populi Dei, est vox Dei.*

Si furtum in manu alicuius inveniatur, vel sub potestate alicuius, tunc ille in cuius domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi Warrantum invenerit, qui eum inde defendere possit) for as another saith, *Cum adsunt testimonia rerum, quid opus est verbis?* Stamf. 19.

Si quis nocte cubaverit, in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & hutesium non levavere, nec plagam à latronibus vel interfectoribus in defensione facienda accepere, non ostendunt quis de Stamf. 179.

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ſe vel de aliis hominem interfecerit, his caſibus mortem dedicere non poſſunt.

Ibid. *Si quis in domum ſuam notum vel ignotum acceperit qui vivus ingredi viſus eſt, vero poſtea nunquam niſi mortuus, dominus domus ſi tunc domi ſit, vel alii de familia qui tunc interfuerunt, pœnam capitalem ſubibunt, niſi forte per patriam fuerint liberati.*

Stamf. 97. & 179. Co. l. 6. *Sunt etiam quædam præſumptiones ita violentæ, ut probationem non admittant in contrarium, ut ſi quis cum cultello cruentato captus ſit ſuper mortuum, vel fugiendo à mortuo, vel mortem confitetur; quibus caſibus non admittitur mortem dedicere, nec alia opus eſt probatione.*

Sir *Ed. Coke*, *l.* 6. maketh three ſorts of preſumptions, *viz.*

1 *Violenta*, (as in this laſt former caſe) which he ſaith is *plena probatio.*

2 *Probabilis*, which (ſaith he) moveth little.

3 *Præſumptio levis, ſeu temeraria*, which moveth not at all.

And yet in caſes of Felony, &c. the confeſſion of the offender, upon his examination before the Juſtice of Peace, ſhall be no conviction of the offender, except he ſhall after * confeſſe the ſame again upon his triall or arraignment, or be found guilty by verdict of twelve men, &c.

*Co. 11. 30. a. vide.

To the like purpoſe alſo is the rule of the Civill law, *Si quis in Judicio ſponte de ſeipſo confiteatur, & poſtea maneat in confeſſione, ſatis eſt.* If any man in judgement do confeſſe of himſelfe, of his own accord, and after doth perſever in his confeſſion, it is enough, and ſuch confeſſion ſhal be taken for an evidence of the crime.

But yet at Lent-aſſiſes at Cambridge, *Anno quarto Caroli Regis*, before Sir *Fr. Harvy*, upon the arraignment of a priſoner for felony, his Examination, which was taken before the Juſtice of peace, wherein he had confeſſed the felony, was onely given in evidence, no other evidence then comming in upon his triall; And the priſoner upon that his owne confeſſion before the Juſtice of peace, was found guilty by the Iury of life and death, and had judgement, &c.

Alſo, in caſes of ſecret murders, and in caſes of poyſoning, witchcraft, and the like ſecret offences, where open and evident proofes are ſeldome to be had, there (it ſeemeth) halfe proofes, or probable preſumptions are to be allowed, and are good cauſes of ſuſpition and are ſufficient for the Iuſtice of peace to commit the party ſo ſuſpected.

1 Ed 4 4. 5 H. 7. 4. 21 E. 3 imp. 4. 16. But note (by the Common law) that in an action of falſe impriſonment, brought againſt the Conſtable (or other perſon that ſhall arreſt another upon ſuſpition of felony) it is no plea for them to ſay, that the Plaintife was ſuſpected of Felony: but hee muſt alledge, that there was ſuch a felony committed, and that the plaintife was ſuſpected for the ſame: for ſuſpition onely, without a felony committed, is no cauſe to arreſt another. Yet ſee the ſtatute of 5. *E* 3. *cap.* 14. that if any man have any evill ſuſpection of any perſons for felony, &c. bee it by day or night, they ſhall bee incontinently arreſted by the Conſtables of the townes, &c. and kept in priſon till they be delivered by the Juſtices, &c. *& hic cap.* 118.

17 E 4 5. 21 H. 7. 19. Alſo the defendant muſt alledge ſome ſpeciall matter (in fact) to prove that hee who was arreſted was ſuſpected of felony, (as to ſay, that the party arreſted is a man of evill fame, or a vagrant perſon, &c.) otherwiſe one man may arreſt any other, yea every man in the towne

may bee arreſted, when any felony is committed.

Mes quel eſt ſufficient cauſe de ſuſpition, & quel nemy, ſerra trie per les Iuſtices. fi. 127.

Alſo the defendant muſt plead, that hee himſelfe had a ſuſpition of the plaintife: for if the Conſtable (or other perſon that ſhall arreſt one that is ſuſpected) doth not ſuſpect him himſelfe, it ſeemeth he may not arreſt him, upon his owne authoritie; and yet by the opinions of *Keble*, *Vavaſor*, and *Townſend*, as well the Conſtable, as others in his aid, may arreſt one that is ſuſpected of felony, upon the ſuſpition and complaint (made to the Conſtable) of the party robbed, 2. *H.* 7. 15. 16. *Br. Faux Impriſ.* 14. yet *alii è contra*; *ibid. ſc.* that the ſuſpition can extend to none other, but only to him that hath the ſuſpition, and *Br.* 14. *H.* 8. 16. *a.* accordeth: *tamen quære*, for if felons may not bee arreſted or ſtayed, but onely by thoſe that ſhall ſuſpect them, and that others may not aid and aſſiſt the party that ſhall ſuſpect another to have robbed him, many felons ſhall eſcape, and felons ſhall often goe unpuniſhed. *See Plo.* 46. *a.* & *Finch* 127. 7. E. 4. 20. Br. ſx. imp. 4. 14. 16. 25.

But now by the ſtat. 7. *Iac.* 5. the Conſtable, &c. in the former caſes, may plead the generall iſſue (Not guilty) and give the ſaid ſpeciall matters in evidence.

Alſo if the Conſtable, or other perſon, ſhall arreſt another upon ſuſpition of felonie, by vertue of a Warrant from a Iuſtice of peace, ſuch warrant ſhall excuſe him, it being given in evidence, &c. *Vi. poſtea tit. Warrants.*

Bailment and Mainpriſe. Cap. 114.

BAilement, Mainpriſe, or Replevin, is the ſaving or delivery of a man out of priſon, before that hee hath ſatisfied the law; *ſc.* by finding ſureties to appeare at a certaine day, and to anſwer, and bee juſtified by the Law.

And to this purpoſe theſe three termes (Bailment, Mainpriſe, and Replevin) be indifferently uſed in our ſtatutes and bookes.

He that is bailed, is taken or kept out of priſon, and deliuered (as it were) into the hands of his ſureties, who are reputed his gardians, and who may keepe him with them, and may impriſon him, by ſome opinions: ſee 22. *H.* 6. *Br. Surety* 8. & *Mainp.* 89. Stamf. 63. F. Mainp. 18.

If the Mainpernors or ſureties doe at any time, or in any caſe doubt that their priſoner, or the party by them bailed, will flye, they may take him, and bring him before any Iuſtice of peace, and upon their prayer, the ſaid Iuſtice of peace may and ought to diſcharge ſuch ſureties, and to commit the party to priſon, except hee ſhall finde new ſureties, &c. Crom. 157.

So if a priſoner be bailed by inſufficient perſons, the Iuſt. of peace (*ex officio*) may cauſe him to finde better ſureties, and may commit him till he ſhall ſoe doe; for the ſtat. of *Weſtm.* 1. *cap.* 15. requireth that ſuch as bee bailed, bee let out by ſufficient ſurety. *P. Mainp.* 2. *Vide antea tit. Surety for the Peace. cap.* 70.

If the priſoner cannot finde ſufficient ſureties, the Iuſtice of peace is not bound (nay ought not, knowing their inſufficiency) to let the priſoner to baile. See *Co.* 10. 101.

And

And therefore, although the number of ſuch ſureties, their ſufficiencie, and the ſum wherein they ſhall be bound, reſteth (in ſome ſort) in the diſcretion of the Juſt. yet it is ſafe for them to take two ſureties (at the leaſt) and thoſe to be Subſidie men, and to be bound in good ſummes, eſpecially if the priſoner be in for felony, or ſuſpition thereof: for the moe, and the more able that the ſureties are, the rather they will cauſe him that is bailed to appeare. And againe, for want of taking ſufficient baile, the Juſtices of peace are fineable: And at Cambridge Aſſiſes *An. Dom.* 1613. Judge *Warberton* threatned to have ſet 40. *li.* fine upon two Juſtices of peace, who had bailed a priſoner (that was committed for ſuſpition of felony, and appeared not) for that the ſureties were not ſubſidie men.

And it ſeemeth that the Juſtices of peace may examine upon their oathes, the ſureties, concerning their ſufficiencie, or whether they be ſubſidie men. The Juſtices of the Common Place (7. *H.* 6. 25.) did examine the abilitie of the Sureties upon their oaths, &c. and that which the higher Courts do, may be a good rule for others. *Vide* 2. *H.* 7. *fol.* 1. *& hic cap.* 69.

Stamf. 77. 22. H. 7. 20. Now bailement by the Juſtices of peace (in caſe of felony, or for any other matter) is alwayes upon a certain ſumme of money (as upon 40. *li.* &c.) the which ſumme the ſureties, &c. ſhall forfeit to the King, if the priſoner appeareth not at his day.

Alſo, the bailement in felony is, *Ad ſtandum rectum de latrocinio prædicto ſecundum legem, &c.* Which ſeemeth to imply, that they which have taken him to baile, ſhall not onely cauſe him to appeare, but alſo to anſwer to the felony. *Stamf.* 77. *d.*

And in this buſineſſe of bailement (being a matter of much weight) it behoveth the Juſtices of peace to bee very circumſpect, as well for feare of wrong, by denying it to him that is baileable, as alſo for feare of danger to the ſervice it ſelfe, by yeelding it where it is not grantable; and for feare of danger to themſelves in both caſes.

3 E. 1. 15. P. Magn. 6. Sect. 3 H. 6. 10. P. 3 he. E. 11. For whoſoever doe detaine priſoners who are baileable, after they have offered ſufficient ſureties, ſhall be grievouſly amerced to the King; and hee that doth take any reward for the deliverance of ſuch, ſhall be amerced to the King; and pay double to the priſoner.

35. E. 3. f. 18. Stamf. 33 77. So on the other ſide, if one who by the law is not baileable, ſhall bee let to mainprize, this ſhall be adjudged a negligent eſcape in him or them that doe let him to mainprize; and for ſuch an eſcape or offence, they ſhall be fined, and puniſhed as followeth.

3 E. 1. 15. P. Main. 3. 4. If the Sheriffe, Conſtable, or any bailiffe of fee, who hath the keeping of priſoners, ſhal baile any perſon which is not baileable, and be thereof attainted, they ſhall loſe their fee and office for ever: & if the under-ſheriffe, conſtable, or bailiffe of ſuch as have fee for keeping of priſoners do it contrary to their Maſters will; or any other Bailiffe being not of fee, they ſhal have 3. yeares imprisonment, & make fine at the Kings pleaſure. *Doct. & Stu.* 135.

27. E. 1. c. 3. Fitzh. 4. Note that the Sheriffes, and other officers which doe let to baile any perſons forbidden (by the ſtatute of *Weſt.* 1 made 3 *E.* 1. *cap.* 15.) to bee bailed, ſhall be puniſhed by the Juſtices of Gaole delivery, according to the forme of the ſame ſtatute; or elſe by the ſaid Juſtices they may be put to their fine, as for an eſcape puniſhable at the Common law. 25 *E.* 3. 39.

Quere if it bee not felony for them to baile felons, or persons suspect for felony, for that these Officers have no authoritie at this day to baile such prisoners, *& vide hic cap.* 106.

Now what persons be forbidden to be bailed by the said statute of *Wgt.* 1 *Accessaries sub hoc vit.*

Note also, that the Sheriffe or Constable might at the common law have bailed a suspect of felony (because they were conservators of the peace) but now that power seemeth to bee transferred to the Justices of peace onely. See the stat. 1. *R.* 3. *c.* 3. *&* 3. *H.* 7. 3.

By the Iustices. If any Justices of peace doe let to baile or mainprise any person, who (for any offence by him committed) is declared not to be baileable, or forbidden to be bailed by the aforesaid stat. of 3 *Ed.* 1. the said Justices of peace so offending shall pay such fines, as shall be assessed by the Justices of gaole delivery where the offence shall bee committed. *Vide* 25 *E.* 1. See *hic cap.* 106. *in fine.* 1 & 2. P. & M. cap. 13. P. Iust. 108. P. Mainp. 4.

But the Justices of peace and Coroners, within London and Middlesex, and in all other Cities, Boroughs, and townes corporate, have authoritie to let to baile felons, and prisoners, as they have formerly accustomed. *P. Dist.* 107. 1. & 2. P. & M.

If the Sheriffe, Justice of Peace, or other officer, shall baile one that is not baileable, such bailment being against Law, *quere* if the Recognisance or bond taken upon such bailment (for the appearance of the prisoner) be not void. See the opinion of *Moile*, 37 *H.* 6. 1. and of the Court there, that such a bond taken by the Sheriffe is void. See Co. 4. 100. b.

Now to shew further the authoritie of the Justices of P. in this behalfe.

The manner. No person arrested for manslaughter, or felony, or suspition thereof (being baileable by the Law) shall be let to baile or mainprise, by any Justices of peace but in open Sessions, or by two Justices of peace at the least, whereof one to be of the *quorum*, and the same Justices to be present together, at the time of the said bailment. 1. & 2. P. & M. cap. 13. P. Iust. 105.

And this bailment the said Justices shall certifie in writing (subscribed with their hands) at the next generall gaole delivery, &c. *vide antea tit. Examination of Felons. cap.* 111.

Also before the bailment of such prisoner, the same Justices, or one of them, shall take the examination of the prisoner, and information of them that bring him, of the fact and circumstances thereof, and so much thereof as shall be materiall to prove the felony, shall put in writing, before they make the bailment: which examination, information, and bailement, they shall certifie at the next generall gaole delivery, *vt supra.*

But if any Just. of P. hath taken the examination of a felon, and information against him, and after hath sent him to the gaole, now upon bailment of him by other Just. they need not to take any new examination of the prisoner, or information against him, but under their recognis. (or together therewith) to certifie by what Just. of P. the felon was committed, to the end that at his hands those examinations and informations may bee required, if he have not certified them.

By the opinion of *M. Crompt.* a prisoner (taken for felony) before his comaitment, ought to be examined, and bailed by two Justices of peace being Cromp. 156.

being together (as before:) but after that the prisoner is examined, and once committed, then he may be bailed by any one Justice of peace, *quære* thereof.

The Justices of Peace which shall send any prisoner to the gaole, ought to shew in their *Mittimus* the cause of the commitment, to the end it may appeare whether such prisoner be baileable or no. *Mittimus the formi.*

Cromp. 131. And if the Justices of peace shall commit one to the gaole, with these words in the *Mittimus*, *&c.* without baile or mainprise (shewing a certaine cause in their *Mittimus*,) yet if such a prisoner be baileable by law, other Justices of peace may baile him, (yet *quære*, seeing their authority is equal) but if the prisoner were committed without baile or mainprise, and without shewing cause in the *Mittimus*, then other Justices of peace cannot or at least shall not doe well to baile him, without making the other Justice which committed him, privie thereto; for hee might bee commited for such cause, as that he is not baileable (as for treason, &c.) 4. Inst. 180. & 296. See pag. seq.

I have seene a Report of a case, *Term. Trin. 37. El.* That upon an assembly of all the Judges and Barons at Sergeants Inne, it was resolved and agreed by them to be put in ure in their Circuits, that if a Justice of peace should commit a man to the Gaole for felony, for which by the Law he is not baileable, but by his *Mittimus* hee commits him generally, not shewing any cause, if other Justices of the Peace shall baile him, not knowing of the matter, &c. they shall bee fined for the same, for they at their perils ought to informe themselves of the truth of the matter, before they baile him.

4. H. 7. 10. a Note, where a man is baileable, yet when he commeth before the Just. hee must offer surety to the Justices, otherwise they may commit him to prison. *Br. Peace 7.*

Next it followeth that I shew what persons be baileable, and what not. It appeareth by the statute of *West. 2. cap. 15.* that in these foure cases following, a man was not baileable at the common law. *Br. Mainp. 47. F. N. B. 66. e.* *Persons not baileable.*

1. No person taken for the death of a man, *&c.* for murder, or any other homicide, was baileable by the common law.

And yet the Justices of the Kings bench doe use to baile them, yea, although it be for murder. *Br. Mainp. 60. 63. 78. 47.* See the stat. 3. *H. 7. c. 1.* Br. mainp. 11. 47. 57. 66. 83.

Also the stat. 1. & 2. *P. & M. cap. 13.* seemeth to admit that for manslaughter, and all other homicides (except murder only) the slayer may be bailed by the Justices of peace; which also I take to bee the common practice at this day. But let the Justices of peace bee sparing and well advised herein, *viz.* that the offence be but manslaughter, and not murder. 2. Inst. 315. P. Mainp. 107. Lamb. 316.

Also it seemeth the Justices of peace cannot baile him that hath committed manslaughter, if either he hath confessed the offence upon his examination (*vide postea tit. Bailment.*) P. Mainp. 1.

Or that he be taken with the manner.

Or that it be apparently knowne that he killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another, may goe under baile, *&c.* See before 13. *H. 7. cap. 1*

2 Secondly, no perſon taken by the Kings commandement, was baileable by the common law; but this muſt be intended of the Kings commandement by his owne mouth, or by his privie Councell, which are incorporate to him. See *Stamf.* 71. *c. Br. Mainp.* 37. 47.

3 Thirdly, no perſon taken by the commandement of the Kings Juſtices, was baileable by the common law: But this muſt be intended of their abſolute commandement; as if the Juſtice commands one to priſon, without ſhewing cauſe why he doth ſo command, or for miſdemeanor done in his preſence, or for ſome other cauſe which lyeth in the diſcretion of the Juſtice (more then in his ordinary power, &c.) and that ſuch impriſonment be for a puniſhment. *Stamf.* 73. See pa. proceed.

And therefore if the Lord Chancellor of England, or Lord Keeper of the great Seale (who have power to commit one to priſon, whereſoever they are in England) ſhall command or commit one to priſon, (by ſuch their abſolute authoritie) ſuch perſon ſhall not be bailed.

And ſo if the Juſtices of the Kings Bench ſhall command one to priſon.

And ſo if the Juſtices of the Court of Common Pleas ſitting in their Court,

Or Juſtices of Aſſiſe in their places, if theſe ſhall commit any to priſon, they are not baileable.

But where any Juſtice or Juſtices ſhall commit one, rather to bee ſafely kept, than for a puniſhment; ſuch commitment may be ſaid to be by an ordinary commandement, and the party ſo committed is baileable. *Termes de ley.*

4 Fourthly, treſpaſſers in the forreſt, were not baileable by the common law: but that was remedied by the ſtat. *1. E. 3. c. 8. & 7. R. 2. cap. 4. F. N. B. 67. c.*

By Statute. But now for that by the ſtatute *1. & 2. P. & M. c.* 13. it is provided, that no Juſtice, or Juſtices of peace, ſhall let to baile any perſon contrary to the aforeſaid ſtatute of *Weſt.* 1. (made 3. *E.* 1.) *cap.* 15. And ſo the ſaid ſtatute of *Weſt.* 1. is now as a law, whereby the Juſtices of peace are to guide themſelves in caſes of Bailment, I will ſhew here what perſons are baileable by that ſtatute of *Weſt.* 1. and what not. *P. Ma. 85.*

By this ſtatute of *Weſt.* 1. no priſoner ſhall be let to baile, which is taken in any of theſe ſix caſes following: 3. *Ed.* 1. *cap.* 15. *P. Main. F. N. B.* 246.

1 Such as have abjured the Realme ſhall not be bailed.

2 Nor any approver or appellor, for that hee confeſſeth the felony, and himſelfe guilty, before he can burden or accuſe another, as coadjutor, or helper with him in doing the ſame. *Stamf.* 143. *Lamb.* 317.

3 Nor he which is appealed by an approver, ſo long as the approver doth live, except he be of good name, or that the approver doth waive his appeale: ſee *Stamf.* 74. Or that the approver be vanquiſhed, 25. *E.* 3. 42. *Fitz.* 150. *d. Br. Main.* 9.

4 Nor he which is taken for burning of a houſe, &c. felonioully. *Vide antea, Felony by the Common law, cap.* 105.

5 Nor any excommunicate perſon, taken (at the Biſhops requeſt, ſc. upon his certificate into the Chancery) by the writ of *Excom. capiend. F. N. B.* 66. *c.*

And

And yet when the party is ſo taken, if hee wil conforme himſelfe to the Lawes of Holy-Church, and give ſurety for his obedience, he ſhall have a writ *de cautione admittenda*, directed to the Biſhop; and if the Biſhop will not, then hee ſhall have a writ to the Sheriffe to deliver him. See *Fitz.63.c.d.*

6 Nor any felon taken with the manner.

7 Nor a theefe openly defamed and knowne.

8 Nor he which is outlawed in caſe of felonie, and yet in ſome caſes, ſuch as be outlawed may be bailed by the court, &c. See *Stat.74.*

9 Nor he which hath broken the Kings priſon. *Vide antea tit. Felonie by Statute, cap.106.*

10 Nor he which is taken for treaſon, touching the King himſelfe.

11 Nor he which is taken for falſifying the Kings money.

12 Nor he which counterfeiteth the Kings ſeale. *Br. Mainp.59.*

In all theſe former caſes, if the cauſe for which the party is impriſoned be treaſon or felony, or otherwiſe toucheth life, or member, then ſhall he not be baileable; otherwiſe it ſeemeth he may be bailed.

13 Nor he which is taken for a manifeſt offence, as if a man be indited and impriſoned for a Royot, or other great offence, before Iuſtices, by force of the Kings commiſſion of Oyer and Terminer, theſe (and the like) are the manifeſt offences whereof the ſtatute ſpeaketh. See *Fitz.25c.f.*

West 1.15. P.Mainp.2. But by the ſame ſtatute of *Weſt.1.* ſuch perſons are baileable, which be taken in any of theſe ſixe caſes following.

Perſons bailable. 1. *Perſons ſuſpected.* First, he that is taken (or indicted) for light ſuſpition of felony, is baileable: ſee *Lamb.335. F.N.B.249.g.250.c.251.f.*

Stamf.74.c. He that is taken upon ſuſpition of burglary, robbery, or theft, if he be not of evill fame, nor that there be any ſtrong preſumption againſt him, it ſeemeth he is baileable.

38.E.3.5. Br.Main.75. A man had ſtolne certaine hogs, and (for that he was of evill fame) he was committed without baile; yet if he could haue brought proofe or witneſſe that he bought them, he ſhould haue beene bailed.

Comp.154. A man is arreſted for ſuſpition of felony, and brought before the Iuſtice, if it ſhall appeare that there is no ſuch felony committed, the party may be ſet at liberty without baile; but if there be a felony committed, though the priſoner can cleare himſelfe, yet the Iuſtice muſt either commit him, or baile him. *Vide antea tit. Felony by Statute.*

P.Mainp.2. Fitz.250.6. Secondly, he that is taken (or indited) for petty Larceny (that amounteth not to 12.d. or aboue the value of 12.d.) if he were not guilty of ſome Larceny before, he is baileable. 2. *Petty Larceny.*

P.Mainp.2. Thirdly, ſuch as be indited of Larceny by enqueſt of office, before the Shetiffe, or before Coroners, or Bailiffes, &c. or in any baſe Court, they ſhall be ſet at liberty upon ſufficient ſurety. 3. *Perſons indicted by enqueſt of office.*

Stamf.74. Fitz.247.& 250.c. Br.main.97. And yet they ſhall not be bailed, if they ee not alſo of good fame; but if they be of good fame they are to bee bailed, although they bee indicted as aforeſaid (before Sheriffes, Bailiffes, Coroners, or before any other ſuch officers, by their office; or in any baſe Court;) yet *quere* if the Iuſtices of peace out of their Seſſions may ſafely baile ſuch perſons for being indicted, they are more than vehemently ſuſpected, &c. *Vide pa ſequente.*

One

One that was indicted before the Coroner, that he had killed another *Se defendendo*, was (by the Iuſtices of gaole deliverie) bailed till the next Aſſiſes, to purchaſe his pardon. 26. *El. Cromp.* 153. See *antea tit. Miſadventure.*

One that was indicted before the Sheriffe for ſtealing of a horſe (which ſeemeth to have beene in his torne) may bee bailed by the Sheriffe (if hee be of good fame) by the writ *de Manucaptione. F.N.B.* 249. *g.*

Alſo one that was indited of burglary, as principal, pleaded not guiltie, and was after bailed. 29. *lib. Aſſ. Fitz. Mainp.* 9. See *infra.*

Another that was indited of robbery, was bailed. 41. *lib. Aſſ.* 30. *Br. Mainp.* 61.

If any murderer being indited, and after arraigned at the Kings ſuit, ſhal bee thereof acquitted within the yeare and day, the Iuſtices before whom hee is acquitted, ſhal not ſuffer him to goe at large, but either ſhal remit him againe to priſon, or elſe may baile him (at their diſcretion) til that the yeare and day bee paſſed, to the end that the wife, or next heire to the party murthered, may haue their appeale of the ſame murder, within the yeare and day after the ſame murder done, &c. 3. *H.* 7. *cap.* 1. *Fitz.* 251. *g.*

Perſons attaint, or convicti.

But ſuch as are attainted, or convicted of felony, are not baileable; for although it doth not appeare by any words of the ſaid Statute of *Weſt.* 1. that it doth prohibite the bailment of ſuch as bee attainted by verdict, yet it is to bee intended, that the ſtatute doth as well prohibite the bailement of thoſe attainted by verdict, as it doth of them who bee attainted by Outlawry; and therefore if a priſoner after he hath pleaded, Not guilty, bee attainted by verdict, that hee killed a man *ſe defendendo*, or by misfortune, yet he ſhall not be bailed by the Iuſtice of peace: *Tamen vide antea tit. Felonies by Caſualty, hic cap.* 96. *& Stamf.* 15. *c. Fitz. N. Br.* 246. *c. que ilz ſerra baile per les Iuſtices* (*de gaole delivery*) *devant quenx il ſerra toye, &c.* Stamf. 74. F.Cor. 297. 354.

And if a man that is arraigned of Homicide doth plead, Not guilty, and is found guilty, and doth pray his Clergy, and is reprived without judgement, hee is not bailable; for being convicted of the felony, hee is more now than vehemently ſuſpected, and the intendment of Law in caſes of bailment, is, that it reſteth indifferent whether he be guilty or not, untill triall, &c. Dyer 177. See Br. Mainp. 94.

The ſame reaſon ſeemeth to hold, if a man be found guilty of homicide, before the Coroner: yet ſee 22. *Aſſ. P.* 94. *Br. Cor.* 90. that ſuch are baileable as are found (before the Coroner) but ſuſpitious.

Alſo a man convicted of felony, remaineth in priſon, and after obtaineth the Kings pardon, the Iuſtice of gaole delivery may baile him till the next gaole delivery, that hee may then come with his pardon and plead it, 2. *E.* 6. *Br. Mainp.* 94.

4. Acceſſaries.

4 Thoſe that be charged with the receit of theeves, or felons, or of commandement, or force, or of aide (in felony done) be baileable. P. Mainp. 2. Stamf. 71.

And it ſeemeth that abbetters, conſenters, and procurers, and all other acceſſaries to felonies, are within the equity of this ſtatute, and are baileable: yea, acceſſaries (as well in caſe of the death of a man, although it bee murder, as in caſe of other felonies) are baileable if they bee of Stamf. 71. c. Fitz. 250. c. Br. Main. 11. 39. & 58.

good

good fame) untill the principall be convicted or attaint; but after the principall is attainted, the acceſſary ſhall not be bailed, but kept in priſon: and yet if (after the attainder of the principall) the acceſſarie ſhall appeare, and plead not guilty, or other plea, it ſeemeth he ſhall be bailed; The reaſon is, for that when the acceſſary ſhall make default, then is it as a *fugam fecit*, and a great cauſe of ſuſpition of the thing; but when hee appeareth, by that the ſuſpition is now taken away, and ſo hee is baileable. See more in *Br. Mainp.* 6. 9. 22. 54. 64. & 97.

4 H. 3. f. 28. Stamf. 71. c. Br. Main. 38.

If a man be acceſſary to two, and the one principall is attainted, though the other be not, yet the acceſſary ſhall not be bailed.

Stamf. 71. F. Cor. 300.

In felony, if the principall die in priſon, or be attainted of another felony, the acceſſary ſhall be bailed. *F. Cor.* 378. *Br. Mainp.* 91.

But note that in caſe of treaſon neither the principall nor acceſſary ſhall be bailed.

Also the ſaid ſtatute of *Weſtm.* 1. *cap.* 15: doth no more reſtraine the principalls (to bee bailed) than the acceſſaries, in thoſe caſes where the ſame ſtatute doth not prohibite to let to Mainpriſe; and therefore if a man be indicted of of Burglary as principall, yet he may be bailed. *Stamf.* 24. *Br.* 56. 29. *Aſſ. pl.* 44. *Principalls.*

Stamf. 74. 2 Mai. 58 90 F. Main. 9.

Alſo the principall in an appeale of robbery may bee bailed; and ſo may hee bee bailed upon an indictment of robbery. *Br.* 61. 75. & 97. And yet in an appeale of robbery, the Booke 6. *H.* 7. *f.* 1. *b.* ſeemes to the contrary.

Stam. 74.

But the principall in the death of a man, is not baileable, either by the Common Law, or by the Statute of *Weſtm.* 1. yet ſee hereof before in this title, that the Juſtices of the Kings Bench doe uſe to baile them. Alſo ſee there for what homicides the Juſtice of peace may baile one that is a principall.

Stamf. 71. b. 58. 58. 97

5 Fift, thoſe that be charged with (or guilty of) any Treſpaſſe, that toucheth not loſſe of life, nor member, bee baileable by the Statute of *Weſt.* 1. 15. But yet let the Juſtice of peace have a care that baile bee not prohibited by any other latter Statute in ſuch caſes of Treſpaſſe. *5. Treſpaſſe.*

Weſt. 1. 15. F. Main. 2.

If any perſon bee committed to priſon, by proceſſe from the Seſſions made upon any indictment upon any penall ſtatute (not prohibiting baile) he may bee bailed (out of Seſſions) by two Juſtices of peace, the one being of the *Quorum*.

Fitz. 250 g. Lamb. 337. Br. 97.

Or hee may have a Writ out of the Chancery (directed to the Juſt. of peace, or to the Sheriffe) to take ſurety of him for his appearance before the Juſtices at their Seſſions, &c. Or he may haue a *Certiorari* to remove the Record into the Kings Bench, and a *Habeas Corpus* to remove the body thither alſo. *Fitz.* 250 *g. h. i.* & 251. *c.*

If proceſſe from the Seſſions ſhall goe forth upon any indictment of treſpaſſe, &c. it ſeemeth that any one Juſtice of peace may take baile of the partie, to appeare at the day, &c. to anſwer to the indictment: and the ſame Juſtice may thereupon make his *Superſedeas de cap. indictat.* (and ſo of the Exigent) for otherwiſe, beſides the miſchiefe of impriſonment, the party may bee outlawed before the Seſſions: ſee ſome preſidents therein, *poſtea tit. Preſidents.*

Dr. 197. 234

Note

Note that the Iuſtices of Peace are not to baile any priſoner, (except the priſoner bee committed for ſuch cauſe, whereof the ſaid Iuſtices of Peace be competent Iudges, *ſc.* ſuch cauſes as they may heare and determine.

And therefore if a man bee taken upon proceſſe of rebellion, iſſuing out of the Chancery, or Star-Chamber, the Iuſtices of peace are not to baile him: And M. *Cromp.* reporteth of two Iuſtices of peace, who were fined for bailing one in ſuch a caſe. Lamb. 317. Cromp. 152.

If a man be arreſted by force of any proceſſe, writ, bill, or warrant, in any action perſonall, the Iuſtices of peace are not to baile him.

Perſons condemned in any of the Kings Courts, and by vertue thereof committed to priſon: and perſons being in execution upon any ſtatute or recogniſance, &c. at the ſuit of any perſon, the Iuſtices of peace are not to baile any ſuch.

6. Sixtly, he that is appealed by an *Approver*, (being no common theefe, nor defamed, after the death of the *Approver*) is baileable by the ſaid Ratute of *Weſt.* 1. P. Mainp. 2. Fitz. 250. d.

Note, that a man cannot become an *Approver*, (or an accuſer of others) before Iuſtices of Peace (for that the Iuſtices of Peace have no authoritie to aſſigne him a Coroner,) nevertheleſſe it ſeemeth both reaſonable and ſerviceable, that if a felon will become an *Approver*, that is, will confeſſe his felony, and alſo accuſe others (that were coadjutors with him in doing the ſame felony, or in other felonies) before a Iuſtice of peace, that ſuch Iuſtice may take his confeſſion, and commit him to the gaole, and may alſo grant out his warrants for the apprehending of the others that are ſo accuſed. Stamf. 144. Br. Peace. 1. Abr. D. all. 176.

Concerning an Approver, obſerve theſe Rules.

1 One cannot be an Approver, but in felony or treaſon. 9. *H.* 6. Stamf. Finch.

2 One cannot be an Approver, but upon an inditement onely. 1. *H.* 7. 5.

3 An Approver muſt accuſe the other of ſuch an offence as he himſelfe did together with the other. *Stamf.* 143.

Againe, the ſtat. of 23. *H.* 6. *c.* 10. taketh away baile from all ſuch as bee in priſon, by condemnation, execution, *Capias utlagatum*, excommunication, ſurety for the peace, or by the ſpeciall commandement of any Iuſtice, prohibiting that ſuch bee not bailed, either by the Sheriffe or other officer or miniſter.

There be divers other ſtatutes which do take away baile from the offenders therof, and that not only upon their ſolemne conviction after publike hearing, triall, and judgement, but alſo upon the record of one or two Iuſtices of peace, or by private examination and confeſſion of the offender, or proofe of witneſſes, or ſuch other private triall had before the Iuſtices of peace out of their Seſſions, moſt of which I haue here ſet downe, leaving the reſt to the Readers better ſearch.

Where bailement is taken away by ſtatute. CAP. 115.

Where baile is taken away.

NO perſon being impriſoned or taken for any of the offences or cauſes hereunder mentioned, ſhall be bailed or let to mainprize otherwiſe than as hereafter followeth, *ſc.*

Such as have abjured the Realme ſhall not be bailed, *Weſt.* 1. *c.* 15. 1. Ed. II.

Accom-

Accomptants found in arrerages before Auditors, ſhall bee impriſoned (without baile) untill they have ſatisfied their maſter all arrerages. *Where baile is taken away.*

Alehouſe-keeper without licence, ſhall bee committed to priſon for 3. dayes without baile and before his delivery ſhall enter recognisance with two ſureties, that he ſhall not keepe any common Alehouſe, &c. *Vide antea tit. Alehouſes. P. 4.*

Alehouſe-keeper prohibited by two Juſtices of peace, and notwithſtanding continueth his ſelling, &c. hee ſhall be commited for three dayes, as aforeſaid *ibid.*

Alehouſe-keepers, without licence, for their ſecond offence ſhalbe committed to the houſe of correction for one moneth: And for every ſuch their offence after, ſhall bee committed to the houſe of correction, there to remaine untill they be delivered by order from the generall Seſſions, *ibid.*

See antea tit Alehouſe. Alehouſe-keepers, Inn-keepers, and victuallers, which ſhall ſuffer townſmen to continue drinking in their houſes, contrary to the Statue of 1. *Iac. cap. 9.*

Or which ſhall ſell leſſe than one full Ale quart of their beſt Beere or Ale for 1. d. and of the ſmall two quarts for one peny:

Such offenders not having ſufficient whereby to bee diſtrained for the forfeiture, ſhall bee committed to priſon untill they have payed the penalty.

Aliens conveying Bowes, or Arrowes, into any parts beyond the ſeas without licence, ſhall be committed untill they have made fine (by the diſcretion of the Juſtices of peace in their ſeſſions) and given ſurety for the payment thereof. 33. *H. cap. 9. P. Arch. 6.*

Appellers, or Approvers ſhall not be bailed. *Weſt. 1. cap. 15.*

Nor he which is appealed by an Approver. *ibid.*

Armour. Perſons going or riding armed contrary to the ſtatute of Northampton, and being thereof convicted, ſhall be impriſoned untill they have payed ſuch fine as ſhall bee therefore impoſed upon them. See *poſtea ſub hoc tit.*

Arreſt. If any perſon ſhall procure one to bee arreſted in another mans name, he not knowing thereof, or without his conſent, ſuch offender being convicted thereof ſhall ſuffer ſixe moneths impriſonment without baile; and before his delivery ſhall pay to the party ſo arreſted, treble coſts, dammages, and expences; and alſo ſhall pay unto the perſon in whoſe name he procureth ſuch arreſt, tenne pound for every ſuch offence. 13. *E. 1. c. 49. 1. Dunn. 3.*

If any of a petty Jury in London ſhall bee attainted, by the verdict of a grand Jurie, and therefore committed to priſon; Or if any of a petty Jurie in London, ſhall receive any mony, or reward, or promiſe thereof, of the defendants in the attaint, for the intent to give ſuch his or their verdict:

As alſo the defendants giving or promiſing ſuch reward, &c. every ſuch offender being thereof committed to priſon, ſhall there remaine without baile, &c. 12. *H. cap. 11.*

where baile is taken away.

Baſtard. The mother, or reputed father of a baſtard child, that shall not performe the Juſtices order, after notice thereof, shall be imprisoned untill they shall put in ſureties according to the ſtatute. See before, *tit Baſtardy, P. Baſt. 1.*

The mother of a baſtard child, committed to the house of correction, for her firſt offence ſhall there remaine for one whole yeere, and for her ſecond offence for one whole yeere, and further untill ſhe can put in good ſureties for her good behaviour, not to offend ſo againe. See *ib.*

Breakers of priſon are not baileable, *Weſt. 1. 15.*

Bridges. Surveyors and Collectors, appointed for the repairing of bridges, if they refuſe to account of the money by them received, they ſhall be imprisoned untill they have truly accounted. 22. *H.* 8. *cap.* 3. *P. Bridges.*

Burners of houſes felониously are not baileable. *Weſt. 1. 15.*

Perſons conſpiring to indite another of felony, are not mainpernable or baileable. 27. *Aſſ. Pl.* 12. *Fit. Mainp.* 7.

Conſtables and Churchwardens, neglecting to levie the forfeitures, for abuſes in Alehouſes, &c. not having ſufficient whereby to bee diſtrained for their forfeiture of forty ſhillings, they ſhall be committed to priſon untill they have payed the ſame forfeiture. See *antea, tit. Alehouſes 1. Iac. cap.* 9.

Conſtables neglecting to execute the Juſtices warrant concerning Alehouſes unlicenſed, the Conſtable ſhall be committed to the county gaole, there to remaine without baile, until he hath puniſhed the Alehouſe keeper, or untill the ſaid Conſtable ſhall pay 40. *s.* to the uſe of the poore. 3. *Caroli Regis.*

Conſtables neglecting to whip trespaſſers in corne, woods, or orchards, &c. at the Juſtices commandement, ſhall be imprisoned untill they have cauſed the offender to be whipped. See *tit. Weſtminſter.* See 3. H. 7. cap. 10.

Perſons condemned in any of the Kings Courts, and by vertue thereof committed to priſon, they ſhall not be bailed untill they have agreed with the plaintiff. *Rast. Ent.* 306. *Fitz. N. B.* 221. *a.*

Conjurers, *vide* Witches.

Counterfeiters of the Kings ſeale, or money, are not baileable. *Weſt. 1. 15.*

Cloth. Refuſers to be weighers of cloth ſhall be imprisoned untill they have paied the forfeiture. See *antea, tit. Cloth. cap.* 11.

Such perſons as ſhall be convicted for making of deceiveable cloth, if two Juſtices of peace ſhall make certificate thereof, and make their warrant to the Churchwardens, &c. for the levying of the forfeitures, and that the ſaid offenders ſhall not have whereby they may bee diſtrained for the ſame, the ſaid two Juſtices of peace may commit the offenders to the common gaole, there to remaine without baile, untill payment ſhall bee made of the ſummes forfeited, &c. *ibi more Cloth.*

Deere. Perſons committed to priſon for committing any offence prohibited by the ſtat. 5. *El. cap.* 21. concerning unlawfull hunting or killing of deere, ſhall remaine there three months and further, untill they ſhall find ſufficient ſureties for their good behaviour for ſeven yeares, &c. See *hic poſtea Hunting.*

Dyers

Dyers, using Logwood, and being thereof convicted, they shall remaine in prison without baile, untill they have satisfied the forf. 23. *El. cap. 9. P. Dying. 1. & 39. El. cap. 11.* *Where baile is taken away.*

Also such offence (of using Logwood) being found by the examination of any Iustice of peace, if the offender shall refuse to be bound (by the said Iustice) to appeare at the next gaole delivery, or quarter Sessions, &c. then the said Iustice of peace may commit such offender to the gaole, there to remaine untill such offender shall be bound accordingly. See *antea tit. Dying. 39. El. cap. 11.*

West. 1. 25. 5. El. 23. See 23. H. 6. c. 10. Excommunicate persons, taken by a Writ *de Excommunicato capiendo*, or yeelding their bodies to the Sheriffe or other officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the stat. of 5. *El. cap. 23.* provided for the due execution of the said Writ *de Excom. capiendo*, such persons shall not be bailed.

Execution. Such persons as are in execution, upon any statute or recognisance, or upon judgement given in the kings Court, at the suit of any person they shall not be bailed untill they have agreed with the plaintife, 1. *R.* 2. *c.* 12. 23. *H.* 6. *c.* 10. *Fitz. Na. Br. fol.* 93. *c. & 121. a.* And yet then the Iustices of peace are not to baile them.

Feasants; see *Partridges.*

Felons, taken for the death of a man, are not baileable; and yet if it bee not murder, and their offence not apparant, it seemeth they may bee bailed. See *hic antea cap* 114.

2 Felons taken with the maner are not baileable. *Wall. 1. cap.* 15.

3 Nor if it be apparently knowne that they did the felony. *ibid.*

4 Nor if they confesse the felony upon their examination before the Iusticeof peace. *Crom. 152. b.*

5 Nor if hee be a theefe openly knowne. *West. 1. 15.*

6 Nor if he be of evill fame by credible report. *Br. Mainp. 75.*

Yet in these former cases of felony, if the theft bee not twelve pence, or above the value of twelve pence, the Iustices of peace may baile the prisoner, it being no felony of death.

7 Nor he which is convict, or attaint of felony, is not baileable. See before *sub hoc tit.*

Accessaries in felony shall not be bailed, after that the Principall (or any one Principall) is attainted. But before the Principall is attainted, the Accessary is baileable by the Common law. *Stamf. 72.*

5. El. c. 21. 7. Fish. 7. *Fish.* Destroyers of ponds, pooles, or moates, wherein any fish are, or unlawfully to fish in any seuerall pond, poole, or moate, to the intent to take, kill, or destroy any fish there; every such offender being thereof lawfully convicted, shall have three moneths imprisonment, and then shal find sufficient sureties for their good behaviour for seven yeares after, or else shall remaine in prison without baile, untill they shall have found sureties accordingly.

11. H. 7. c. 23. 8. Fish 12. 2 Gagoors, Packers, or Searchers of fish, that shall take any extortion for doing their office, shall haue forty dayes imprisonment without baile.

23. E. c. 7. 8. Fish d. 1. 3 Eaters of flesh upon any fish day, shall forfeit and pay for every time

Where baile is taken away.

twenty ſhillings, or elſe ſuffer one moneths impriſonment without baile (after any lawfull conviction in that behalfe.) 5. *El. cap.* 5.

Forcible Entrie, or Detainer; perſons convicted thereof ſhall not bee bailed, untill they haue payed their fine, or haue found ſureties by recognizance for payment thereof. See *antea tit. Forcible Entrit.*

Foreſtallers, Regrators, and Engroſſers, being thereof convicted, ſhall be impriſoned for two moneths without baile. 5. *Ed.* 6. *ca.* 14. *P.* 4.

Forgers of any Deed, writing ſealed, Will, or court roll:

2 And the aſſenters thereto:

3 And the publiſhers thereof, knowing the ſame, &c.

Every of the offenders aforeſaid (in caſes of forgery) being thereof convicted, ſhall ſuffer perpetuall impriſonment during their lives, where any mans eſtate of inheritance, freehold or coppyhold, ſhall bee defeated, charged, or moleſted thereby: otherwiſe the offenders ſhall ſuffer one yeeres impriſonment without baile. 5. *Eliz. c.* 14. *P.* 1. 2.

Fowle. Deſtroyers of any Feaſant, Partridge, Pigeon, or houſe-dove, (or of any Hearne, Mallard, Ducke, Teale, or ſuch other fowle;) Or to ſhoote at any ſuch fowle, and the offence proved before any two Iuſtices of peace; every ſuch offender ſhall be committed for three moneths without baile, unleſſe the offender ſhall forthwith pay to the uſe of the poore there, 20 *s.* for every ſuch fowle ſo deſtroyed, &c. See *antea tit. Partridges.*

Fraudulent Conveiances, gifts, bonds, or ſuits, &c.

1 The parties thereto:

2 The defenders, or juſtifiers thereof, or putters thereof in ure, knowing the ſame: 13. *El. c.* 5. *P.* 1. 2.

3 And thoſe which ſhall aſſigne over any lands, leaſes, or goods, ſo to them conveyed, knowing the ſame;

Euery perſon being of any of theſe laſt offences lawfully convicted, ſhall ſuffer impriſonment one halfe yeere without baile. See more *Stat.* 14. *El.* 11. & 27. *El. c.* 4.

Games unlawfull.

1 The maintainers of houſes, or places, for any vnlawfull game:

2 Players in common houſes or places at any ſuch game: 33. *H.* 8.

3 Players (elſewhere) at any vnlawfull game:

Every Iuſtice of peace, ſeeing or finding any ſuch offence, may impriſon the offenders till they finde ſureties by Recognizance, no more to offend in the premiſſes, &c. See *antea tit. Games unlawfull.*

Gaoles. Collectors, or ſurveiors for Gaoles (in certaine Shires) refuſing to make account, ſhall bee committed to priſon, there to remaine untill they haue made a true account. 23. 8. *H. cap.* 25. *El. c.* 24. & 13. *El. c.* 25. But theſe ſtatutes are herein now expired.

Gunnes. ſuch perſons as ſhall ſhoote in, keepe, carry, or uſe any Gunne, dag, croſſe-bow, or ſtone-bow, contrary to the ſtat. of 33. *H.* 8. *cap.* 6. (upon proofe thereof made before any Iuſtice of peace) ſhall bee impriſoned untill they haue payed ten pound for every ſuch offence. See *antea tit. Gunnes.*

No perſon under the degree of a Lord, ſhall ſhoote in any hand-gun, within

within any Citie or towne, at any fowle, bee other make upon any Church, house, or Dove-coate: Neither shall any person shoote in any place, any halle-shot, or any more pellets then one, at one time, upon paine to forfeit ten pounds, and to have three moneths imprisonment. 33. *Ed.6. cap.14.*

Hares. Every person which shall chase, kill or destroy, with any Gun or Bow, any Hare:

2 Or shall trace, or course any Hare in the snow:

3 Or shall take or destroy any Hare with cords, or any other engines: Any of these last offences being proved before any two Justices of peace, the offender shall bee committed for three moneths without baile, unlesse the offender shall forthwith pay to the use of the poore there, xx.s. for every Hare so destroyed or taken. See *antea tit. Partridges.* *where baile is taken & not.*

Hatters. Which shall take above two apprentices:

2 Or which shall take an apprentice for lesse time then 7. yeares: The offenders in either of the former cases, shall suffer one moneths imprisonment without baile. 8. *El.* 11. *P. Hats.*

Hawkes. Takers (unlawfully) of any Hawkes, or of their egges, out of another mans ground, and being thereof lawfully convicted, shall indure three moneths imprisonment, and then shall finde sureties for their good behaviour for seven yeeres after, or else shall remaine in prison without baile, untill they finde sureties accordingly. 5 H.21. 7 Hawkes 1. See 21.H.7. cap.7. hic postea Partridges

Hawkers. Betweene the 1. day of July, and the 31. of August, the offence being proved before any two Justices of peace, the offenders shall bee committed to the common Gaole for one moneth without baile, unlesse they pay forthwith 40.s. for every such Hawking, and xx.l. for every Pheasant, or Partridge, that they shall kill, or take. 7. *Ia.* 11. See *antea, tit. Partridges.*

Highwayes. Baylifes, and High-Constables, which shall not pay the forfeitures by them collected, shall bee imprisoned untill they have payed the same. See before *tit. Highwayes. 2. Pb. & M. cap.* 8. *P.* 118.

Hony. See *Waxe*

Hostelers, or Inne-holders, which shall make any horse-bread (contrary to the statute 21. *Ric. cap.* 21.) Or which shall not sell their horse-bread, hay, oates, beanes, pease, provander, or other kind of victuall (for man or beast) for reasonable gaine, and being thereof lawfully convicted, &c. the second time, shall bee imprisoned by the space of one moneth without baile. 21. *Ia. Regis, cap.* 21.

So of such Hostelers, and Inne-holders as are allowed by the said statute to make horse-bread within their houses, if the horse-bread which any of them shall make bee not sufficient, lawfull, and due of assise, &c. and that they bee thereof lawfully convicted the second time, they shall be imprisoned one moneth without baile. *Ibid.*

Hunting. If any lay man, not having in lands 40.s. *per ann.* Or if any Priest or Clerke, not having x.l. living *per an.* shall have or keep any hound, Grey-hound, or other dogge for to hunt, or any ferets, hays, Harepipes, cords, nets or other engines, to take or destroy Deere, Hare, Conies, or other Gentlemens game, and shall bee thereof convicted at the sess. of

the peace, every such offender shall bee imprisoned for one whole yeere. 13. R. 2. ca. 3. P. 2.

If any person shall keepe any Greyhound for Deere, or Hare, not having sufficient living, and shall bee thereof convicted before any two Justices of peace, he shall bee committed for three moneths without baile, unlesse hee forthwith pay forty shillings for having such Greyhound. See before tit. Partridges. 1. Iac. ca. 27.

Hunters, and takers of the Kings Deere. See the statute of *Cartæ de Foresta*. cap. 10.

Whether bail is taken in any.

Hunters, or killers of any Deere or Conies (in the night or day time) in any Parke or Warren, or in any other inclosed grounds, and being thereof lawfully convicted, every such offender shall suffer three moneths imprisonment, and find sufficient sureties for his good behaviour for the space of seven yeares after, or else to continue still in prison without baile, untill they shall find sureties accordingly. 5. El. ca. 21. 35. El. ca. 13. P. Forests 9. & 7. Iac. 13.

The stat. of *Westm.* 1. ca. 20. provideth that trespassers in parkes, and ponds, being thereof attainted, shall yeeld to the party wronged great damages, and shall have three yeares imprisonment, making fine at the Kings pleasure, and at the end of three yeeres finde good sureties not to commit the like trespasse afterwards, or for want of such sureties shall abjure the Realme, or bee outlawed. See *Fitz. Iud. & Dyer* 238. 5. El. fol. 2. *Fit. Iudgement* 64.

But note that this stat. *de malefactoribus in parcis*, extendeth only to hunting, or killing of beasts there, and not to other trespasses. 34. E. 3. fol. 11. *Fitz. Iudgement* 144. And if a man hunts there, or shall come into a parke but for that purpose, yet hee shall bee punished according to this stat. *Fit. Iudgement* 62.

The stat. 19. H. 7. 11. ordaineth, that if any person having no Parke, &c. of his owne, shall keepe any Deere hayes, or buckstalls, or any person shall stalke at any Deere, without licence, the offenders being thereof convicted, shall bee committed to prison, till they have found surety for the payment of the forfeiture of the statute.

King, Speakers of false newes, which may cause discord betweene the King and his people, &c.

2 And speakers of false newes, or lyes, of any the Peeres, or great Officers of the Realme.

The offenders in either of the former cases shall bee imprisoned untill they have brought him into the Court, who was first author of the tale. 3. E. 1. ca. 34. 2. R. 2. c. 5. *P. Newes* 1. See *Dyer* 355. & 285. and the statutes of 1. & 2. Ph. & Mar. ca. 3. 1. El. c. 6. & 23. El. c. 2.

3 No person committed by the speciall commandement of the King, or by the commandement of any of his privie Councell, shall bee bailed. See *antea sub hoc tit.*

4 No person committed by the speciall commandement of any of the Kings Justices, shall bee bailed, *P. Main.* 23. H. 6. ca. 10. See *ib.*

5 So in all cases, where a stat. ordaineth, that an offender shall bee imprisoned at the Kings will or pleasure, there the prisoner cannot bee bailed

bailed or delivered, untill the King hath ſignified his pleaſure of him: (as if one be impriſoned for going or riding armed contrary to the ſtat. of *Northampton*, made *An. 2. E. 3. c. 3.*) *2. E. 3. f. 3. Bt. Contempts. 6.*

Lamb. 556. And in ſuch caſes, the priſoner is to redeeme his liberty with ſome portion of money, as hee can beſt agree with the King or his Juſt. for the ſame: and the Juſtices before whom ſuch an offender ſhall be convicted, may aſſeſſe ſuch fine or ranſome, according to their diſcretions, and upon payment thereof may baile the priſoner; for the King therein ſignifieth his pleaſure by the mouths of his Juſtices. See the firſt title of *Fortible Entry.*

Inne-keepers, or Inholders, ſee *hic c. 15. 18. Alehouſe-keeper, & Hoſteler.* *Where baile is taken away.*

5 Eliz. 4. *Labourers*, and *Artificers* departing from their worke before it be finiſhed, ſhall have one moneths impriſonment without baile. 5. *El. c.* 4. *P. Labor.* 10.

2 Servants departing before their terme bee ended (unleſſe it bee for ſome cauſe to be allowed by ſome Juſtice of peace:)

3 Servants departing at the end of their terme, without any quarters warning given before two lawfull witneſſes:

4 Perſons (compellable to ſerve) that upon requeſt made, ſhall refuſe to ſerve for the wages rated and appointed by Proclamation, &c.

5 Perſons (compellable to ſerve) that have promiſed or covenanted to ſerve, and doe not ſerve accordingly:

5 Eliz. 4. 1 Lab. 6. Every of theſe foure laſt recited offenders (upon proofe of the offence before any two Juſtices of Peace, &c.) ſhall be committed to ward, there to remaine without baile, untill he ſhall be bound (to the partie offended) to ſerve and continue with him according to the ſtatute.

1 Lab. 24. Perſons refuſing to bee bound apprentices (according to the ſtatute) upon complaint thereof made to any Juſtice of peace, hee may commit ſuch offenders to ward, who ſhall there remaine until they will be bound to ſerve according to the ſtatute, 5. *Eliz. 4.*

1 Lab. 14. 7 Women (of the age of 12. yeeres, and under 40. and unmarried) that ſhall refuſe to ſerve, they ſhall be committed to ward, there to remaine untill they they ſhall be bound to ſerve according to the ſtatute, 5. *Eliz.*

8 Maſters giving wages, and ſervants (workmen, or labourers) taking wages (or other commodity) contrary to the rates aſſeſſed by Proclamation, &c. every ſuch M. ſhal have ten daies impriſonment without baile, and every ſuch ſervant, workeman, or labourer, ſhall have 21. dayes impriſonment without baile, 5. *Eliz. 4. P. Lab. 4. hic cap. 31.*

LR. 4. 4 Liver. 2. *Liveries.* Such perſons as at their proper coſts ſhall buy, or weare any liveries, cloths, or hats to have maintenance, and bee thereof convicted, ſhall have one whole yeeres impriſonment without baile: but this ſtat. is now repealed by the ſtat. 3. *Car. 4.*

In an appeale of *Mayhem*, where upon evidence the act ſhall appeare to bee heynous, the offender or defendant ſhall not bee bailed. 6. *H. 7. f. 1. fi. 70.*

5 Eliz. 16. *Maulting.* If any perſon ſhall diſobey the reſtraint of maulting, or any other order made in Seſſions touching the ſame, and bee thereof convicted (before any two Juſtices of peace) hee ſhall bee committed to the Goale for three dayes, (without baile) and after there to remaine untill hee ſhall become

where baile is taken away. become bound in 40 l. to performe and obey such order as restrained. *See auncient Maniz.*

If any person shall buy any Barley to malt, after such a restraint, hee shall be imprisoned as aforesaid. *Ibid.*

Money. Persons taken for falsifying the Kings money, shall not be bailed. *Westm. 1. cap. 15.*

Musters. Persons absenting themselves from Musters, being commanded to muster before any having authority for the same, and having no lawfull impediment:

2 And persons (being commanded to muster as aforesaid) that shall not bring with them their best furniture and armour, which they have for their owne person:

The offenders in either of their former cases, shall for every such offence, suffer ten dayes imprisonment without baile, unlesse they agree with two of the said Commissioners, to pay to the Kings use, 40 s. a fine for every such offence. *P. Captaines. 12?* & 5. Ph. & M. 3.

To muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners, in some open field, *ubi se ostendentes præludunt prælio. Co. l. 7?*

And it is worthy of observation, that by the law before the Conquest, the Musters and shewing of armor, should bee, *uno eodemque die per universum regnum, ut aliqui pœnis arma familiaribus et nervis accommodare, &c. Ibid.*

Newel. See before *King.*

Oath. Refuseth to take the oath of Allegeance, (being lawfully tendred to them) shall be committed to the common Gaole, there to remaine without baile, untill the next Assises, or quarter Sessions. See before *tit. Oath, and Recusants.* 3. Ia. 4. 7. Ia. 6.

Parliament, and Knights of the Parliament, See *hic postea, Shiriffes.*

Parke. Hunting therein, see *hic Hunting, and Hunters.*

Partridges. If any person shall shoot at, kill, or destroy (with any gun, or bow) any Partridge, Feasant, or other fowle, &c.

Or shall take, kill, or destroy any Partridge, Feasant, or Pigeon, with setting dogges and nets, or with any manner of nets, engines, or instruments.

3 Or shall take out of their nests, or willingly destroy in the nest, the egges of any Partridges, Feasant, or Swanne.

4 Or shall have or keepe any setting dog, or net, to take Partridges, or Feasants, (except they have sufficiency of estate, &c.)

Every of these foure last recited offenders (upon proofe of the offence before any two Justices of peace) shall bee committed to the common Gaole, there to remaine for three moneths without baile, unlesse the offender shall forthwith pay xx s. for every such fowle and egge so taken or destroyed; and 40 s. for having such setting dogge, or net. See *tit. Partridges.* 1. Ia. 27.

5 Hawkers at Partridge, or Feasant, in July or August, (upon proofe of the offence before any two Justices of peace) every such offender shall be committed to the common Gaole, there to remaine for one 7. Ia. 21.

moneth

moneth without baile, unleſſe the offender ſhall forthwith pay 40. s. for every ſuch hawking, and 20. s. for every Feaſant or Partridge ſo killed or taken. See *ibid.* *Where baile is taken &c.*

23. Eliz. 10. 6 Perſons convicted according to the ſtatute of 23. *Eliz.* 10. for deſtroying or taking of Feaſants or Partridges in the night time, ſhall have one moneths impriſonment without baile, unleſſe they pay the penalty of that ſtat. within ten dayes; and further to become bound with good ſureties, for the ſpace of two yeares, not to offend ſo againe.

21. H 7 17. Co. 7. 18. 7 Perſons convicted according to the ſtat. of 11 *H.* 7. *c.* 17. for taking the egges of any hawke, or ſwan, out of their neſts, ſhall be impriſoned for a yeare and a day, and fine at the Kings will. See *Hawkes.*

5. Eliz. c. 9. *Periury.* Perſons committing perjurie, by his or their depoſition, in any Court of record, or Court Baron, being thereof lawfully convicted, ſhall have ſixe moneths impriſonment without baile. *P. Per.* 1. 2. & 14. *Eliz. cap.* 11.

2 So of Procurers of ſuch perjury; they being thereof lawfully convicted, and having not to pay the penalty of the ſtatute, they ſhall have one yeares impriſonment without baile.

Phyſicians. Hee which is committed to priſon by the Preſident of the Colledge of the faculty of phyſicke in London, &c. ſhall there remaine without baile, untill he ſhall bee diſcharged by the ſame Preſident, or by ſuch as they ſhall authorize, 1. *M. cap.* 9.

1 Ia. 31. P. 2. 3. *Plague.* Refuſers to pay their rates, for the reliefe of perſons infected with the plague, and not having whereon to be diſtreined for ſuch their rates, they ſhall bee committed to the Gaole, there to remaine without baile untill they ſhall ſatisfie the ſame, and the arerages. See *tit. Plague.*

43. Eliz 2. P. 3 4. *Poore.* Refuſers to pay their rates towards the relieſe of the poore, ſetting them on worke, or putting out of poore children to bee apprentices, and not having whereon to be deſtreined for ſuch their rates, they ſhall bee committed to the Gaole, there to remaine without baile, untill they ſhall pay the ſame, and the arerages.

P. 2. 2 Overſeers (of the poore) refuſing to make their account, or refuſing to pay (to the new Overſeers) ſuch arerages, ſummes of money, or ſtocke, as ſhall remaine in their hands upon their account made; they ſhall bee committed to the Gaole, untill they haue performed the ſame See *antea, tit. Poore.*

P. 2. 3 Overſeers, negligent (otherwiſe) in their office, ſhall forfeit for every default 20. s. And not having whereon to be diſtreined for ſuch forfeiture, they ſhall bee committed to the Gaole, there to remaine without baile, untill the ſaid forfeiture ſhall be paid. See *ibidem.*

P. 2. 12 4 The grandfather or grandchilde, or other parents children, refuſing to relieve one the other, in ſuch manner as ſhall bee aſſeſſed by the Iuſtice of peace at their Seſſions, ſhall forfeit for ſuch default 20. s. for every moneth, and not having whereon to bee deſtreined for ſuch forfeiture, they ſhall be impriſoned as aforeſaid, untill the ſaid forfeiture ſhall bee paid. See *ib.*

P. 13. 5 Refuſers to pay their rates towards the relieſe of the Priſoners in the

Where baile is taken away.

the Kings Bench, Marſhalſey, and not hauing whereon to be diſtrained for ſuch rates, they ſhall be impriſoned without baile, untill they ſhall pay the ſame. See *antea, tit. Stock of the Shire.*

Prayers. Such as offend againſt the ſtatute 1. *El. c.* 2. concerning Vniformity of Common prayer and ſervice in the Church, and bee thereof lawfully convicted (by verdict of 12. men, or by their owne confeſſion, or by the notorious evidence of the fact) they ſhall be committed without baile; ſee the ſtat. 1. *El.* 2. for in ſome caſes the offender ſhall ſuffer ſix moneths impriſonment, in other caſes one whole yeares impriſonment, and in other caſes impriſonment during life. P. Statham, K.

Preachers. Diſturbers of Preachers in the time of their Sermon, and their aiders and procurers. 1. *Mar.* 3.

2 Such as ſhall diſturbe the arreſting of any ſuch offender:

3 Such as ſhall reſcue any ſuch offender, being apprehended:

Every ſuch offender (being thereof convicted before any two Iuſtices of peace) ſhall be committed to the gaole, there to remaine without baile for three moneths, and further till the next quarter Seſſions, &c. But *quere* if this ſtat. be in force. *hic cap.* 14. 1. M. 1. ca. 1. P. 1. 2.

Priſon breakers thereof ſhall not be bailed. *Weſt* 1. *cap.* 15.

Prophesiers, to the intent to make diſturbance within the Kings Dominions, every ſuch offender being thereof lawfully convicted, for his firſt offence ſhall ſuffer one yeares impriſonment without baile; And for the ſecond offence, ſhall ſuffer impriſonment without baile during his life. *P. Prophet.* 1. 5. El. cap. 15.

Purveyors, taking purveyance within five miles of either Vniverſity, of Cambridge or Oxford, without licence &c. and being thereof convict, they ſhall ſuffer three moneths impriſonment without baile. See *antea, tit. Purveyors.* 2. & 3. Ph. & M. c. 15. P. Purv. 34.

Purveyers (or other officer) of any Nobleman, &c. taking any thing of any ſubject againſt his will, ſuch offenders ſhall be committed to Priſon without baile, untill they ſhall redeliver the goods ſo taken, or the value thereof. See *ibid.* 23. H. 6. ca. 14. P. Purv. 1.

Recuſants. Perſons ſuſpected to be Ieſuits, Seminaries or maſſing Prieſts, and being examined thereof (by any having lawfull authority in that behalfe) if they ſhall refuſe to anſwer directly thereto, they ſhall bee impriſoned without baile, untill they ſhall make direct anſwer thereto. 35. *El. cap.* 2. 15. El.

2 Perſons ſuſpected, if they ſhall refuſe to anſwer the Iuſtice of peace upon oath, whether they be Recuſants or no, they ſhall bee committed to the common gaole, there to remaine without baile, untill the next Aſſiſes or Quarter Seſſions. See *antea, tit. Recuſants.* 3. Iac. 4.

3 Popiſh Recuſants refuſing to take the oath of allegeance (being lawfully tendred them) they ſhall be impriſoned till the next aſſiſes, or quarter ſeſſions, as aforeſaid. See *ibid.*

4 Every other perſon of the age of 18. yeares, refuſing to take the oath of allegeance, ſhall be committed untill the next aſſiſes, or quarter ſeſſions, as aforeſaid. See *antea, tit. Oath.* 7. Iac. c.

5 A woman Recuſant convicted, and not conforming her ſelfe, being Ibid.

ing

ing therefore committed to prison, shall there remaine without baile untill she shall conforme her sefe, &c. See *antea tit. Recusants.*

3 Ja. 9. 20 H. 8. 7 Ed. 6. 6 A woman covert, refusing in the open Assises, or at the quarter Sess. of the peace, to take the oath of allegeance, she shall be committed to the common gaole without baile, untill she will take the said Oath.

1 Ja. 25 H. 8. 7 If any woman or child under the age of 21. yeares, shall passe over the sea without lawfull licence, the master of any ship permitting the same shall suffer imprisonment 12. moneths without baile.

P Rec. 75. 8 Recusants refusing to declare what armour, &c. they have, or if they or any other person shall hinder or disturbe the delivery of such armour to any person lawfully authorized to seise the same, every such offender shall have 3. moneths imprisonment without baile. *Stat. 3. 7.*

P. Recus. 28. 35. El. 2. 9. Recusants and Sectaries, which shall impugne the Kings authority in causes Ecclesiasticall:

10 Or that shall perswade others thereto, or from coming to Church to that end and purpose:

11 Or shall meet at any Conventicles, under colour of any exercise of religion (contrary to his Majesties lawes:)

12 Or shall perswade any other to meet at any such Conventicle, or meetings:

Every person which shall bee lawfully convicted of any of these last 4. offences, shal be committed to prison, there to remaine without baile, until they conforme themselues to come to Church, and make open submission and declaration of their said conformitie.

1 Inc. 4. 130. 13 Persons absent from Church upon any Sunday, and not having whereon to be distrained for the forfeiture, shal be committed until payment be made thereof. See *antea tit. Recusants.*

Persons above the age of 16. yeares, which shall absent themselves from the Church by the space of one moneth, and shall bee thereof lawfully convicted, shall forfeit for every moneth 20 *li.* And if he shall not be able, or shall faile to pay the same within three moneths after judgement thereof given, he shall be committed to prison, there to remaine untill he hath paid the said summe, or conforme himselfe to goe to Church, &c. 23. El. 1. P. 24.

So of such persons as shall keepe any School Master which shall absent themselves from the Church as aforesaid, or which shall not bee allowed by the Ordinary; if such person shall not be able, or shall faile to pay the penaltie (*sc.* 10 *li.* for every moneth) within three moneths, &c. he shall be committed without baile, as aforesaid, *ibid.*

Persons convicted for Redisseisin, are not baileable. *Merton cap. 3. Fitz. 66. c.*

13 H. 2. *Rioters* attainted of great riotes, shal have one yeares imprisonment without baile, F. *Riot.* 13.

All persons convicted (by the view of the Justices, or upon their enquirie, or otherwise) if any Rior, shall be committed untill they have payd their fine. See before *tit. Riots.*

13 El. 1. *Rogues* incorrigible, committed to the gaole, or house of correction, shall remaine there untill the next Quarter Sess. See *antea tit. Rogues.*

Servants,

where baile is taken away.

Servants, see *Labourers*.

School-maſter, that is a Recuſant:

2 Or that is not allowed by the Ordinary; and being of either of the ſaid offences convicted, ſhall bee impriſoned for one whole yeare without baile. 23. El. 1. P. Recuſ. 2.

Sheriffes not making their election of Knights for the Parliament in their full countie, betweene the houres of 8. and 11. in the forenoone: 8. H. 6. 7. 23. H. 8. 15. P. Paul. 4.

2 Or returning Knights for the Parliament, contrary to the ſtatute: And being of either of the ſaid offences attainted before the Juſtices of aſſiſe, (or in the ſtar-chamber, *Dyer* 168.) they ſhall bee impriſoned for one whole yeare without baile.

Sheriffes Vnder-ſheriffe, or other perſons, making any Warrant for the ſummons, arreſting, or attaching of any perſon to appeare in any court, not having the originall proceſſe or Writ warranting the ſame, upon examination and proofe thereof before the Judges of aſſiſes, or Judges of the Court, &c. ſuch offenders and their procurers ſhall bee committed to the gaole, there to remaine without baile, untill they have payed (among them) x.l. to the party grieved, and his coſts and dammages, and alſo xx.l. a peece to the King. 43. *El. cap.* 6.

Souldiers, who have purloined their horſes, or harneſſe, ſhall be committed without baile, until he hath ſatisfied the party grieved, his executors or adminiſtrat. for ſuch horſe or harneſſe. See before *tit. Souldier*. 2 Ed. 6. 2.

Stock of the Shire. Refuſers to pay their rates thereto, and not having whereon to be diſtrained, &c. ſhall bee committed, till they have payd it. *Vide antea tit. Stock*. 43. Eliz. 4

Subſidie. If any perſon aſſeſſed to the ſubſidie ſhall not pay the ſame, by reaſon whereof his body ſhall be arreſted, upon a Precept directed out by the Commiſsioners of the ſame Subſidie, &c. bee ſhall remaine in priſon without baile, untill he hath paid the ſame ſumme wherewith he is chargeable, and alſo for the fees of ſuch arreſt, *ſ.* to him or them that ſhall execute ſuch precept, xx. d. See the ſtatute of *Grants of Subſidies*.

Tithes. The defendant in a ſuit for tithes, that diſobeyeth the Judges ſentence, ſhall be committed without baile, untill hee ſhall finde ſufficient ſureties by recogniſance, &c. to obey and performe that ſentence. *Vide tit. Tithes*. 27. H. 8. 20. 32. H. 8. 7.

Tranſportation. The Maſter or Mariners tranſporting any corne, beere, herring, whitage, or wood, without Licence:

2 The owners of ſuch things tranſporting more then they are licenſed: P. Corne 1. 2. 3.

3 The Mariners carrying ſuch things into any ſhip to be tranſported: 1. & 2. P. & M. 3.

Every ſuch offender ſhall be impriſ. one whole yeare without baile; and yet ſee *antea tit. Tranſpor.* that every man may tranſport corne without licence (or danger, as it ſeems) it being at the prices there mentioned.

4 The Maſter or Marriners, tranſporting, or ſhipping to that intent, any leather, tallow, or raw hides, and being thereof convicted, ſhall have one yeares impriſonment without baile. 2. Eliz. 8. P. Leather 30.

5 Tranſporters of live ſheep:

6 And every perſon that ſhall bring, deliver, ſend, receive, take, or procure any live ſheepe to bee conveyed out of any the Kings Domi- 8. Eliz. 3. P. Sheepe 1.

nions,

nions, their aiders, procurers, and comforters: *when baile is taken away.*

The offenders in either of the former caſes, being thereof convicted, ſhall for the firſt offence ſuffer one whole yeares impriſ. without baile.

1. Iac. 4. 7 The maſter of any ſhip, permitting any women or children under 12. years of age to paſſe over the ſeas without licence, ſhall ſuffer 12. moneths impriſonment without baile.

8 Aliens tranſporting Bowes or Arrowes: ſee *Aliens.*

If any man ſhall tranſport or convey any Horſe, Mare, or Gelding, out of England without licence, &c. and bee thereof lawfully convicted, hee ſhall ſuffer impriſonment by the ſpace of one whole yeare. 1. *E.* 6. *cap.* 5.

Treaſon. Perſons committed for any treaſon touching the King, they are not baileable. *Weſt.* 1. *cap.* 15.

Counterfeiters of mony, or of the Kings Seale, are not baileable. *Weſt.* 1. *cap.* 15. *Br. Mainp.* 59.

Vagabonds: ſee before *Rogues.*

Vtlawed perſons, taken for the ſame, are not baileable. *Weſt.* 1. 6. 15. & 23. *H.* 6. *cap.* 10.

Wards. By the ſtat. of *Weſt.* 2. *cap.* 35. if any perſon ſhall raviſh (*ſc.* ſhall take and carry away) any Ward, the offender ſhall have 2. yeares impriſonment; and if he doe not reſtore, or doe marry the child after the years of conſent, and be not able to ſatisfie for the marriage, he ſhall abjure the Realme, or have perpetuall impriſonment: And it is ſaid, that it is at the election of the Juſtices to award the offender to abjure the Realme, or to have perpetuall impriſonment; and that if the Juſtices ſhall award him to perpetuall impriſonment, that the King cannot pardon him that impriſonment, for that it is in lieu of dammages to the plaintife, and that impriſonment is an execution thereof, the which the King cannot pardon, without the aſſent of the party plaintife.

13. Eliz. 8. P. Waxe 7. *Waxe*, and veſſels of Honey; if any perſon ſhall counterfeit any the marks thereof, or ſhall mark them with any other mans marke, and ſhall be thereof convicted, he ſhall ſuffer 3. moneths impriſonment without baile.

P. Iuſt. of P. 92. P. Weights 13. *Weights.* Falſifiers or counterfeiters thereof, ſuch offenders (after they be indited thereof) ſhall be taken and impriſoned without baile, untill they be acquitted or attainted: and if they be attainted, they ſhall remaine in priſon untill they have made fine and ranſome, according the Juſtices diſcretion. 9. *H.* 5. 8. *Parl.* 2. *Quære*, whether this ſtatute be now in force.

Witches, Conjurers, Sorcerers and ſuch others, which ſhall take upon them to hurt any perſons in body, though it be not effected:

2 Or ſhall take upon them to tell of any treaſure, or goods (loſt or ſtoln) where it may be found:

3 Or ſhall take upon them to provoke any perſon to love:

4 Or ſhall hurt any cattell or goods thereby:

1. Iac. 12. P. Conjur. 2. 4 Ph. & M. c. 8. P. Women 7 Every ſuch offender being of any the ſaid offences lawfully convicted, ſhall have one whole yeares impriſonment without baile.

Women. Taking of women (unmaried and under the age of 16. yeares) out of the poſſeſſion of their parents, or other perſon, having lawfully the

keeping, &c. of them, and against their wils, the offender being thereof convict, shall be two yeares imprisoned without baile, &c.

2 Taking away and deflouring such maid or woman childe, as aforesaid: P. Women 2

3 Contracting of marriage with such a maid, against the will of, or unknowing of or to the father of such maid, (if he be living) or against the will, &c. of the mother, having the custody and governance of such child;

The offenders in these two last cases, being thereof lawfully convicted, shall have five yeares imprisonment without baile, &c.

See more concerning women, *antea, Recusants.*

Recognisance, Cap. 116.

A Recognisance is a Bond of record, testifying the recognisor to owe a certaine summe of mony to some other: and the acknowledging of the same is to remaine on record, and none can take it but only a Judge or officer of record.

And these recognisances, in some cases, the Just. of peace are inabled to take, by the expresse words of certaine statutes: but in other cases (as for the peace, and good behaviour, and the like) it is rather in congruitie, than by any expresse authoritie given them either by their commission, or by statute.

Note, whersoever any statute giveth them power to take a bond of any man, or to bind over any man to appeare at the Assises, or Sessions, &c. or to take sureties for any matter or cause, they may take a recognisance: yea, whersoever they have authority given them, to cause a man to do a thing, there it seemeth they haue (in congruitie) power given them to bind the party by recognisance to performe or doe it: and if the party shall refuse so to be bound, that then the Just. may send him to the gaole; for it is a rule in law, *Concesso uno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit:* But yet inquire of this last case, for there is also another rule, *In generali concessione non veniunt ea, quæ quis non esset verisimiliter in specie concessurus.* Crom. 139. See Fitz. Co. 11. 52.

I will here set downe only some particulars where the Justices of peace (out of their Sessions) may take a recognisance.

One Justice of peace may take a recognisance for the peace.

Also one Justice of peace may take a recognisance for the good behaviour (by the commission:) and these the Justice of peace may take, either upon discretion, or upon complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of peace may bind by recognisance such as doe declare any thing against a felon, to appeare at the Assises, or sessions, there to give evidence against the offender; and so in divers other cases.

One Justice of peace may bind by recognisance such as keepe any common houses or places for unlawfull games, that they keep the same no longer. See *antea, tit. Games, &c.*

And also such as play at unlawfull games, contrary to the statute of 33. H. 8.

33. *H.8. cap.* 9. that they use the same no more.

One Iust. of peace may bind over persons suspected to use Logwood in Dying; and such as can discover the same. See *antea, tit. Dying.*

One Iust. may bind by recognisance takers of Partridges, &c. and hawkers in corne, to appeare at next sessions to answer their said offences. See *antea, tit. Partridges.*

One Iust. of peace may bind by recog. any person convicted for taking or destroying any feasants, partridges, fowle or hare, that they offend not thereafter in any the particulars any more.

Also they use (by way of prevention) to bind trannellers for larks, that they shall destroy no partridges, &c. *Quere* of this, how it is warranted. See *postea tit. Warrants.*

But the binding of trannellers in this sort seemeth rather to do hurt than good, in that it doth inable or tolerate the use of trannelling in the night time, whereby many partridges are secretly taken and killed; whereas any two Iustices of peace may more legally prevent that night-taking and destroying of partridges, by taking away all such nets, where they shall see cause; the which they may doe by force of the statute, 7. *Iac. c.* 11. which see here before, *tit. Partridges.*

I have knowne sundry Proclamations, authorizing and commanding the Iustices of peace (at or before the beginning of the Lent time) to convent and call before them all Taverners, Inne-holders, Alehouse-keepers, keepers of ordinary tables, and other victuallers within the precinct and rule of the said Iustices; and to take bonds (by recognisance) with sufficient sureties of every of them, and in good summes of money to the Kings Majesties use, that they shall not dresse any flesh in their houses in the Lent time for any respect, nor to suffer it to be eaten there.

One Iustice of peace may binde by recognisance the master that shall misuse his apprentice, &c. to appeare at the next sessions, &c. See *antea tit. Apprentices.*

Two Iustices, &c may take recognisance of Alehouse-keepers, for keeping good orders, &c. See before.

They may bind by recognisance an Alehouse-keeper (committed for victualling without licence) that he shall keepe no more an Alehouse. See *antea, tit. Alehouse.*

Two Iustices, &c. may baile prisoners, and upon such bailement they are to cause the prisoners to find sureties for their appearance, &c. which must be done by recognisance. See here, *tit. Bailment.*

They may binde the Overseers of cloth by recognisance, to see the statute observed. See hereof *antea, tit. Cloth.*

Also two Iustices of peace may bind by recognisance the Defendant in a suit of tithes, to obey the sentence of the Iudge. See *antea, tit. Tithes.*

Whether the Iustices of peace may bind an offender against a penal statute, to appeare and answer his fault at the sessions: see hereof *postea tit. Warrants. cap.* 117.

31. H. 8. 39. 4. Eccpp. 1. Note that every obligation and recognisance taken by Iustices of peace, must be made to the King, and shall be made by these words, *Domino Regi*, upon paine of imprisonment of any person that shall take it otherwise:

And all ſuch bonds of recog. ſhall be in the nature of a Statute Staple, to all intents. See hereof *poſtea, tit. Recogniſances, cap.* 123.

A Iuſtice of peace can take no recogniſance, but onely for ſuch matters as concerne his office. See hereof, *tit. Surety for the peace, antea.*

Note alſo, that a Recog. taken by a Iuſt. of P. is a matter of record, preſently, ſo ſoone as it is taken and acknowledged, although it be not made up, but onely entred into his booke; nay although it bee not entred, as it ſeemeth. See *Stamf. 77. a & b. Br. Record.* 58. ſuch a matter.

If a Iuſtice of peace ſhall take a recogniſance where he hath no authority, it ſeemeth void. See *hic* 155.

And theſe Recogniſances taken by the Iuſtices of peace are to be certified by them at their next quarter Seſſions: except Recogniſance taken of ſuch as ſhall informe againſt felons, and upon bailement of felons, which by ſtatute they are appointed to certifie at their next generall gaole delivery. See *antea, tit. felony.*

For the formes of recog. See hereafter, *tit. Recogniſances, cap.* 123.

Warrants. Cap. 117.

NOw concerning the Precepts, or warrants, to be made by the Iuſtices of peace.

By Parol. The Iuſtice of peace (ſeeing that he is a Iudge of Record) his precept or commandement by word of mouth (in ſome caſes) is as ſtrong as his precept in writing. Lamb. 89.

And therefore the Iuſtice of peace, upon any riot done in his preſence, may command the rioters to be arreſted, and cauſe them to finde ſureties for their good behaviour. 14. H. 7. 18.

So upon an affray, aſſault, threatning, or other breach of the peace done in his preſence, the Iuſtice of peace may command by word, the officer being preſent, or his owne ſervant, to arreſt ſuch offenders to find ſureties for the peace. See before, *tit. Suretie for the peace.*

And where the Iuſtice of peace commandeth one being preſent to arreſt another that is alſo in his preſence, though that commandement be by word onely, it is good, and it is reputed as an arreſt made by the Iuſtice himſelfe, hee being preſent when the arreſt is made. *Br. Fx. impriſ.* 33. See *hic cap.* 8.

But the Iuſt. of P. cannot command by word to arreſt another being out of their preſence; neither may one in the abſence of the Iuſtice arreſt another upon his command by parol, but it muſt be by a precept or warrant in writing, by the greater opinion of the Iuſtices. 14. H. 7. 8. Br. peace 7.

And yet in caſe of rioters, the Iuſtice of peace may by word command his ſervants to arreſt them, in the abſence of the Iuſtice, by the opinions of *Fineux* and *Tremale*, Iuſtices. See hereof *antea, tit. Riots.* 14. H. 7. 9. 10. Fin. 37.

By writing. Next, their warrant or precept by writing, ought to be under their hand and ſeale, or under their hand at leaſt. See *hic infra.*

The forme. And if it be for the peace, or good behaviour, or the like, where ſureties are to be found or required, there the warrant ought to containe the ſpeci-

all

all cause and matter, whereupon it is granted, to the intent that the party (upon whom it is to be ſerved) may provide his ſureties ready, and take them with him to the Iuſtice of peace, to be bound for him: but if the warrant bee for treaſon, murder, or felony, or other capitall offence, or for great conſpiracies, rebellious aſſemblies, or the like, it needs not containe any ſpeciall cauſe, but there the warrant of the Iuſtice of peace may bee, to bring the party before him to make anſwer to ſuch things or matters generally, as ſhall be objected againſt him on the Kings Majeſties behalfe: and this is now the common uſage, by the report of *M. Crompton*. Com. 148.

And I once received a warrant, brought me by one *Thomas Evans* (a Purſivant or meſſenger of his Majeſties chamber) under the hand of the right honourable *Tho.* Lord *Elleſmeere*, late Lord Chancelour of England, for the apprehending of one *Iames Malin*, for a matter of contempt, and the ſaid warrant was in generall words, *ſc.* to anſwer to ſuch matters as were to be objected againſt him, without any ſpeciall cauſe therein mentioned. An. D. 1607.

Alſo I ſaw another war. granted under the hand of *Poph.* chiefe Iuſtice, to bring one *Edmonds* (of Barnewell by Cambr.) before him to anſwer to ſuch matters as hee had to object againſt him, on the Kings Majeſties behalfe without any ſpeciall cauſe or matter therein ſet downe.

The like forme you ſhall find in the booke of *Entries, tit. Attachment: Nisi omiserit, &c. quin attach. E. H. &c. Vt quod habeas corpus ejus coram Iustic. nostris ad Assisas in com. tuo tenend. assig. apud W. in Octab. Sancti Mich. ad respondendum nobis de his quæ sibi ex parte nostra tunc ibidem objicientur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

But it is not ſafe for a Iuſtice of peace to grant out his warrant with a blanke, for about 30. *Eliz.* one wrote to Sir *I. R.* a Iuſtice of peace, to ſend him a precept or warrant with a blanke, that hee might put therein one whom he would attach upon ſuſpition of felony, and the Iuſtice of peace did ſo, (granting a warrant with a blanke, where he neither knew the parties name, nor the matter) and for this the Iuſt. was fined in the Star-chamber, as *M. Crompton* reporteth, *Author des corts.* 34.

Alſo the warrant of the Iuſtice of P. would bee under the Seale of the ſaid Iuſtice, for every Iuſt. of P. (being a Iudge of Record) hath a Seale of his office, and when hee maketh a warrant under his ſeale to the officer, then the officer ought to give credence to the Seale, for that is his authoritie, *per. Brudnell.* 14 *H.* 8. 16.

Againe, the warrant of the Iuſtice of peace is the better, if it beare date of the place where it was made, and it muſt expreſſe the yeare and day when it was made. See 21. *H.* 7. 22. 14. H. 8. 16. Lamb. 90.

A Iuſtice of peace who is dwelling out of the county, granteth his warrant to be ſerved within the County, the officer cannot carry the party out of the County to the Iuſtice of peace who made the warrant, but muſt carry him before ſome other Iuſtice within the county. Fo. 39.

Quære whether ſuch a warrant be good or no.

Firſt, for that a Iuſtice of peace hath no authoritie, but in the countie where he is a Iuſtice, and in commiſſion. See *ante, cap.* 6.

And again, for that the date of the place ſeemeth to be materiall by the bookes, 14. H. 8. aforeſaid, & 21. H. 7. 22. Br. ſ. x. imp. 12.

The Iuſt. of peace may make his warrant to bring the party before himſelfe, and then the officer needs not to carry the party before any other Iuſtice, And yet upon a warrant for the P. granted *ex officio*, the uſuall manner is otherwiſe. See *antea, tit. Suretie for the peace.* Br. Peace & Co. 5. 39.

Alſo the Iuſtice of peace may in ſome caſes make his Warrant to attach the offender to bee at the next ſeſſions of the Peace, there to anſwer his ſaid offence, &c. See *antea, tit. Counterfeiters; & poſtea, Warrants, cap. 121.*

If a Iuſtice of P. ſhal make his warrant to the Sheriffe to attach one, and to bring him to the next Seſſions, there to finde Sureties for the peace, &c. it is good. *Cromp.* 135. 136.

So if the Iuſtice ſhall make his warrant to warne a man to appeare at the next Seſſions, there to give in Evidence for the King: And where the Iuſtice ſhall command one by his warrant to bee, or appeare at the next Seſſions, &c. if the party doe not appeare, then from that Seſſions there ſhall goe out a precept to attach him for ſuch his contempt. *Cromp.* 123.

For what cauſe.

A Iuſtice of peace (*ex officio*, by the firſt *Aſſig.* in the Commiſſion) may grant his warrant to arreſt or attach one that hath broken the peace, or committed other miſdemeanor againſt the peace, to find ſureties for the peace or good behaviour, as the caſe ſhall require.

Alſo the Iuſtices of peace in divers caſes doe uſe to grant their warrant againſt a man for his neglect, or other default, as for refuſing to pay towne rates, and the like: And ſuch warrant may be either to attach the offender to be at the next ſeſſions, there to anſwer, &c. or elſe to bring the offender before the ſaid Iuſtice, or any other Iuſtice, &c. who, finding cauſe, may binde ſuch an offender to appeare at the next Seſſions to anſwer the ſaid default.

Alſo whereſoever any ſtatute doth give authoritie to the Iuſtices of peace to cauſe another perſon to doe a thing, there it ſeemeth they have power given them (of congruity) to grant their warrant to bring ſuch perſon before them, that ſo they may take order therein. See *antea tit. Recogniſance, cap. 116.*

But I finde it much controverted, whether a Iuſt. of peace may grant a Warrant to attach perſons ſuſpected of felony, or againſt offenders upon a penall ſtatute, unleſſe ſuch perſons or offenders be firſt thereof indicted; for that the Iuſtice of peace, as he is a Iudge of record, ſo it is ſaid, he muſt have a Record, whereupon he doth award his proceſſe or precept. 14 H. 8. 16. Br. Peace 6. See Br. Com. 3.

For the firſt, ſome hold that the Iuſtice of peace may grant his warrant to attach perſons ſuſpected of felony, for that it ſeemeth by the firſt *Aſſignavimus*, in the commiſſion, and by the ſtatute of 5. *Ed.* 3. 14. that any one Iuſtice of peace may cauſe the Conſtables to arreſt and impriſon offenders ſuſpected of felony, &c. And how ſhall the Iuſt. of P. cauſe this to be done but by his warrant or commandement?

Againe, if a felony bee done, there is no doubt but that every private man without a warrant may arreſt whomſoever hee ſuſpecteth of it, being

ing a man of evill fame, &c. See hereof *cap.* 118. *fit. Arreſt.* But if the offender being purſued ſhall reſiſt, *quære* who ſhall bee aiding to a private man, whoſe goods are ſtolne, and who ſuſpecteth another to have ſtolne them, either to ſearch for his goods, or to apprehend the party ſuſpected, if the Iuſtice of peace (by his warrant) ſhall not command the Conſtable to aid him therein. If it be objected that the Conſtable may doe all this of his owne authoritie (upon requeſt to him made by the party robbed) bee it true, yet we finde by common experience, that the Conſtables, without the Iuſtices warrant therein, are, for the moſt part, both very fearefull, and alſo remiſſe herein, as neither knowing their owne authoritie, nor the danger.

See antes, fit. Examinatiõ 22. H. 7. 15. 16. pro & cõtra.

Lamb. 193.

Beſides, this is no new thing, for there is ſuch a preſident in the old book of Iuſtices of peace (*impreſſ. 1561. fo. 414.*) yea, it is the common practice at this day, and it ſeemeth to be very ſerviceable, and of two evils the leſſe is to be choſen, ſc. that an offender, or ſuſpected perſon, ſhould bee impriſoned for a time (though ſometimes wrongfully) than that one which hath committed felony ſhould eſcape unpuniſhed.

14. H. 8. 16. Br. Peace 6. 31. Ed. 3. Imp. 8 & 9. Ca. 10. 76.

And yet by the opinion of the Court 14. *H. 8.* a Iuſtice of peace cannot make a warrant to arreſt a felon, unleſſe he be indicted of felonie, (or that the Iuſt. himſelfe hath ſuſpition of the felon.) But if the Conſtable, or other officer, ſhall ſerve ſuch a Warrant, he ſhal juſtifie the ſame, though the Iuſt. did erre in the awarding thereof. See 21. *E. 3.* 9.

Mich. 39. Eliz. Crom. 197. The inconvenience thereof. See Lamb. 192.

Next, for the Iuſtices of peace to bind over, or to grant a warrant againſt offenders, upon any penall ſtatute, to appeare at the Seſſions, to anſwer to their offence or fault, though ſuch ſtatute bee within the power of the Iuſtice of peace, yet ſuch warrant, or binding over of ſuch offenders, may ſeeme not warranted, unleſſe it be ſpecially ſo appointed in the ſtatute; as it is by the ſtatutes of 5. *El. cap.* 4. 23. *El.* 10. 39. *El.* 11. 33. *H. 8.* 1. See *antes, fit. Conniezeiters, Dying, Labourers, Partridges, and Sacraments.*

But ſuch offenders ought firſt to bee indicted, and thereupon proceſſe from the Seſſions is to bee awarded againſt them untill they come in, &c.

Crom. 238. Lamb. 191.

And yet there be ſundrie preſidents of attachments made from one Iuſtice of peace againſt labourers and ſervants, that ſhall refuſe to ſerve, or that ſhall depart out of their ſervice, &c. contrary to the ſtatutes, to bee before the Iuſtices at the ſeſſions, to anſwer to their ſaid defaults. But theſe may ſeeme alſo to have beene warranted, and ſo appointed by the ſtatute of labourers, made *an. 25. E. 3. cap. 6.* which ſtatute is now repealed by the ſtatute of 5. *El. 4.*

Alſo it is uſuall, by way of prevention, to bind by Recogniſance ſuch as doe trannell for larkes, that they ſhall deſtroy no patridges; as alſo to bind by recogniſance Butchers, and all Victuallers, that they ſhall not kill nor dreſſe any fleſh in Lent time, contrary to the lawes: And for theſe purpoſes the Iuſtices of Peace doe grant out their warrants to convent the ſaid perſons before them: for Victuallers (*ſc.* Taverners, Inne-holders, Alehouſe-keepers, keepers of ordinary tables, and other victuallers) I have knowne ſundry proclamations which ſeem to warrant the Iuſtices of

peace

peace therein: but for the other, what Law or warrant there be for it I know not, untill the offender be convicted, see *hic tit. Partridges.* Yet see *antea, cap. 66.* where the Justices may in some cases grant their warrants against offenders upon penall statutes. But here the Justices have power to heare and determine out of their Sessions.

Also where the offence prohibited by such a statute amounteth to the breach of the peace; or good behaviour, there it seemeth the Justice may (either upon discretion, or complaint of such an offence and breach of the statute) grant out his warrant, and binde over the offender to the next Quarter Sessions, &c. to answer his said default, and in the meane time to be of good behaviour. See *hic cap.* 11. 17. & 31. *Servants assaulting their Master.*

To whom directed. The Justice of peace may direct his precept or warrant to the Sheriffe Bailiffe, Constable, or other officer, or to any other indifferent person by name, though he be no officer, yea, to any person that he shall think meet, but yet the safest way is to direct it to the Constables, or to some other sworne officers. 14. H. 8. 16. 2 Br. Peace 6.

A warrant directed by the Just. of peace to the Constable, or other sworne officer, and to a stranger, who is no officer, and the warrant is made *conjunctim & divisim*, and is delivered to the stranger, who executeth it, all this is good.

A warrant directed by the Just. of peace to two men joyntly, to arrest another, &c. yet any one of them alone may doe it.

A warrant directed by the Justice of peace to the Sheriffe, he may by word command his under-sheriffe, bailiffe, or other sworne or knowne officer to serve it, without any precept by writing.

And so the Sheriffes servant, or other person, by the Sheriffes commandement, and as servant to the Sheriffe, may serve or execute such warrant, without any precept by writing. See *Br. Faux Imprif.* 45. & *Trespasse* 339. 1 Inst. 161

But otherwise if the Sheriffe will command another man (that is a stranger) to serve it, he must deliver him a precept in writing, otherwise a writ of false imprisonment will lye for the arrest.

A warrant directed by the Justice of peace to the Sheriffes bailiffe, or to the Constable, or to the Justices servant, or to any stranger, to arrest one, &c. such person (to whom that warrant is made) must serve it himselfe, for these can command none other to doe it, neither by word nor writing, nor make any deputy. 2 E. 4. 14. 14 H. 7. 9 b. 20 H. 7. 13. 21 H. 7. 14. Co. 69.

the officers duty. The officer to whom any warrant shall be directed and delivered, ought with all speed and secrecie to seeke and finde out the partie, and then to execute his said warrant.

A sworne and knowne officer (be he Sheriffe, under-sheriffe, bailiffe, or constable, &c.) needs not to shew his warrant to a man, when he commeth to serve it upon him, although he demandeth it: But if the Just. will direct his warrant to his servant, or to another (who is no sworne officer) to serve it, they must shew their warrant to the party, if he demand it, or otherwise the partie may make resistance, and needs not to obey it. *Br. Faux Imprif.* 23.

But

Co.6.54. & 9.68. But a ſworne and knowne officer, if he will not ſhew his Warrant to the partie, yet he ought (upon the arreſt) to declare the contents of his Warrant, &c.

Co.9.69. And an officer giveth ſufficient notice what he is, when he ſaith to the party, I arreſt you in the Kings name, &c. And in ſuch caſe the party at his perill ought to obey him, though he knoweth him not to be an officer; and if he have no lawfull warrant, the party grieved may have his action of falſe impriſonment againſt him.

Dyer 244. F.Bar. 248. Lamb 95. If an officer do arreſt a man for the peace, or the like, before that he hath any warrant, and then afterwards doth procure a warrant (or a warrant commeth after to him) to arreſt the party for the ſame cauſe, yet the firſt arreſt was wrongfull, and the officer is ſubject to an action of falſe impriſonment. See the ſtatute 43. *El. cap.* 6.

Where there be two or three knowne by the name of *I.S.* of *D.* Yeoman, and upon a warrant (or other proceſſe) granted out againſt one of them, another of them is arreſted, an action of falſe impriſonment will not lye againſt the officer for this; for the officer is not bound at his perill, to take notice which of them is the offender, &c. And perhaps no particular offence is mentioned in the warrant, *Tamen vide L.* 5. *E.* 4. *fo.* 51. *&* 84 *pro & contra. &* 11. 4. *fo.* 90 *contra, ideo quære.*

Where a warrant is granted out againſt *I.N.* the ſon of *W.N.* and the officer thereupon arreſteth *I.N.* the ſon of *T.N.* although in truth he bee the ſame perſon that offended, & againſt whom the complaint was made; yet this arreſt is tortious, and the officer ſubject to an action of falſe impriſonment. See the like matter, 10. *E.* 4. *fol.* 12. *Br. Fx. imp.* 38.

The officer, upon any warrant from a Juſtice of peace, for the peace, or good behaviour, or in any other caſe where the King is a partie, may by force breake open a mans houſe, to arreſt the offender, &c. See hereof *antea*, in the former title, *Forcible Entry, cap.* 78.

See Crom. 114. a. & 142. If an officer, or other perſon, hath arreſted a man by vertue of his warrant, which hee hath from a Juſt. of peace, and then taketh his promiſe that he wil come again to him ſuch a day to goe to the Juſt. with him according to his warrant (and ſo letteth the party goe) who comes not againe at the day appointed, it ſeemeth the officer cannot after arreſt or take him againe by force of his former warrant, for that this was by the conſent of the officer: But if the party arreſted had eſcaped (of his own wrong) without the conſent of the officer, now upon freſh ſuit the officer may take him again & again ſo often as he eſcapeth, although he were out of view, or that he ſhal flie into another towne or county. See more, *poſtea, tit. Impriſonment, & L.* 5. *E.* 4. *f.* 12. *Br. Fx. imp.* 18.

Co.3.44.52.

Where an officer hath received a warrant, he is bound to purſue the effect of his warrant in every behalfe, or otherwiſe his warrant will not excuſe him of that which he hath done. See *antea, tit. Surety for the peace, cap.* 69.

11.8.59. If an officer, having a lawfull Warrant to arreſt another, ſhalbe reſiſted, or aſſaulted by the party, or by any other perſon, then may that officer juſtifie the beating or hurting of ſuch perſons; and others (upon his prayer) may and ought to aide the officer.

If

If a Iuſtice of peace ſhall make any warrant for a matter wherein he hath juriſdiction, although it be beyond his authority, yet is it not diſputable by the Conſtable, or other ſuch officer, but muſt be obeyed and executed by the officer; as if the Iuſtice of peace ſhall make his warrant to arreſt one for the peace or good behaviour, &c. without cauſe, the officer ſhal not be puniſhed for executing this: But if a Iuſt. of peace ſhall make his warrant, to doe a thing out of his juriſdiction, or in a cauſe whereof the Iuſt. of peace is no Iudge, if the officer ſhall execute ſuch a warrant, here he is puniſhable, for the officer is not bound to obey him, who is not judge of the cauſe, no more than a meere ſtranger: and ſo note that the officer is bound to take notice of the authoritie and juriſdiction of the Judge. See ſuch a matter 22. *Aſſ.* 64. *Plo.* 304 *b. Cro.* 106. 14. H. 8. 16. Br. Fz. Imp. 1 Lamb. 67. 94 Co. 10. 76. Cromp. 79

If any man ſhall abuſe the Iuſtice of peace his Warrant, as by caſting of it into the dirt, or treading it under his feet, &c. it ſeemeth he may be bound to his good behaviour therefore, and may alſo be indicted and fined therefore, for it is the Kings proceſſe. Cromp. 148

When any perſon commeth before a Iuſtice of peace, by force of any warrant for the peace, good behaviour, or for a riot, or the like, the partie muſt offer ſureties, or elſe the Iuſtice may commit him. See *ante eo tit. Surety for the peace.*

If a Iuſtice of peace ſhall grant his warrant to one to apprehend another for murder, robbery, or felony, it ſhall be ſafe for the Iuſt. upon the delivery of his ſaid Warrant, to take (upon oath) the examination of the ſaid party that requireth the Warrant, or at leaſt, to bind him over by recog. to give evidence at the next Gaole delivery, &c. againſt the offender, leſt that afterwards when the offender ſhall be brought (by the officer) before the Iuſt. upon his ſaid warrant, or elſe happen to yeeld himſelfe to the ſaiſt Iuſt. then the party that procured the Warrant be gone: for by credible report I am informed, that one having procured a Warrant from a Iuſtice of P. in Suff. againſt another for a robbery done upon the high-way, and the Iuſtice upon the delivery of his Warrant, not having bound over the complainant to give evidence, nor taken his examinatiõ, as aforeſaid, that at the next Aſſiſes and Gaole delivery, the party charged with the robbery, came and offered himſelfe to the ſaid Iuſtice of Peace, who immediatly acquainted Sir *Thomas Flemming* (then Lord Chiefe Iuſtice and Iudge of Aſſiſe there) with the whole matter, but the ſaid Iudge much blamed the ſaid Iuſtice of peace for not having bound over the ſaid complainant at the firſt when he granted him the warrant, and charged the ſaid Iuſt. of peace at his perill, preſently to ſend for the party complainant, to come to give evidence, &c. And further directed the ſaid Iuſtice of peace preſently to binde over the party charged, with good ſureties for his attendance and appearance.

See P. 2.

Arreſt

Cap. 36.

Arreſt, and Impriſonment. CAP. 118.

What. AN Arreſt is the apprehending and firſt reſtraining of a mans perſon, depriving it of his own will and liberty, and may be called the beginning of Impriſonment.

Impriſonment is where a man is arreſted againſt his will, or is reſtrained of his libertie, by putting him into the gaole, cage, or ſtocks, or into ſome houſe, or otherwiſe by keeping him in the high ſtreet, or open field, ſo as hee cannot freely goe at libertie when and whither hee would.

If the Conſtable, or other officer, (upon a warrant received from a Juſt. of peace) ſhall come unto the partie, and require, or charge, or command him to goe or come before the Juſtice, &c. this is no arreſt or impriſonment: and upon a warrant for the peace, the officer ought firſt to require the party to goe before the Juſtice, before he may arreſt him. See hereof, *antea, tit. Surety for the peace.*

But this arreſt (being in execution of the commandement of ſome court, or of ſome officer of Juſtice) is expreſſed in their writs, precepts or warrants, by theſe words, or the like, *ſc. Capias, Attachias, &c.* to attach, arreſt, take, bring, or convey, or cauſe to be attached, arreſted, &c. all which words, doe imply the taking and laying hold of the perſon.

To this arreſt all lay perſons (under the degree of Barons, or Peeres of the Realme) be ſubject, and that by warrant from the Juſtices of peace, as you may ſee here before, *tit. Surety for the peace, cap. 68.* *What perſons.*

But the Iuſtices of peace are not to grant their warrants for the peace, or the like, againſt any Nobleman: and yet if a *Capias* or attachment ſhall bee awarded againſt a Baron or Peere of the Realme, from the Kings Iuſtices at Weſtm. for a contempt, or in caſe of debt or treſpaſſe, the officer without any offence of law may execute the ſame, for that the officer is not to diſpute the authoritie of the Court.

See P. Arreſt a. Eccleſiaſticall perſons alſo may be arreſted, and that by a Warrant from the Iuſtices of peace in ſome caſes. See hereof, *tit. Surety for the peace, cap. 68.*

A woman covert may be impriſoned by the Iuſt. of peace, for a force or a riot committed by her. See *antea, tit. Forcible Entry, and Riots, cap. 77.*

But otherwiſe of Infants, in ſuch caſes (as it ſeemeth) ſee *ibid.*

Yet if an Infant cannot finde ſureties for the peace, being demanded againſt him, hee ſhall bee committed untill hee hath found ſureties. See *antea, cap. 68.*

An Infant (though of yeares of diſcretion, yet hee) ſhall ſuffer no impriſonment, nor other corporall paine, for any offence committed or done by him againſt any ſtatute, except that an Infant be expreſſed by name in the ſtatute. *Br. Impriſ.* 101. *Covert* 68. *Plo.* 364. *Doct. & Stud.* 147, 148.

Cap. 34. The liberty of a man is a thing ſpecially favoured by the common law of this Land; and therefore if any of the Kings ſubjects ſhall impriſon another without ſufficient warrant of him, or his law, the party grieved may *For what cauſe, and by whom.*

may have his action, and ſhall recover dammages againſt the other; and the King alſo ſhall have a fine of him: for impriſonment of another without offence of the law, is one of the Kings royall prerogatives, and only annexed to the Crowne.

Alſo by the ſtatute of *Magna Charta*, made 9. *H.* 3. *c.* 29. no freeman ſhalbe taken or impriſoned, &c. but by the lawfull judgement of his equals, (*ſc.* upon his conviction (for ſome offence) by the verdict of a Jurie of 12. good and lawfull men) or by the law of the Realme. See *the Petition An.* 3. *Caroli Regis*. P. Accuſat. 1. 5. E. 3 c. 9.

And by this ſtatute of *Magna Charta*, every arreſt or impriſonment, and every oppreſſion againſt the law of the Land, is forbidden; and if any Judge, Officer, or other perſon, againſt the law, ſhall uſurpe any juriſdiction, and by colour thereof, ſhall arreſt, impriſon, or oppreſſe any man, it is puniſhable by this ſtatute. See *Co.* 10. 75. Co. 10. 74.

Note, that all juriſdiction ought to be either by Charter, or by Preſcription. *Co.* 11. 99.

Alſo by the ſtatutes of 25. *Ed.* 3. *cap.* 4. 28. *E.* 3. *cap.* 3. & 42. *E.* 3. *cap.* 3. no perſon ſhall be taken or impriſoned, nor put to anſwer, unleſſe it be by indictment or preſentment (of a Jury) before Juſtices, or by matter of Record, or by due proceſſe made by writ originall at the common law. See *P. Accuſation* 1. & 42. *Aſſ.* 5. And *Br. Faux impriſ.* 30. 2. *H.* 4. the body of a man ſhall not be taken but by Proceſſe out of a Court of Record.

A Commiſſion to arreſt or take a man (and his goods was) holden to be againſt Law, for that this ought to be either upon indictment, or ſuit of the partie, or other due proceſſe of Law, *Br. Commiſſ.* 15. 16. & *Faux impriſ.* 9. & *Indictment* 38. 42. *Aſſ.* 5. 22. 24. *E.* 3 9. *Co.* 5. 64.

And ſo note, that no man ſhall be arreſted for debt, detinue, treſpaſſe, or other cauſe of action, but only by vertue of a Precept or commandement out of ſome Court of Record.

Neither ſhall any man commit another to priſon, except he be a Judge of Record. *Co.* 10. 103.

But yet for miſdemeanors done againſt the kings peace, (as for Treaſon, felonie, or breaking of the peace, &c.) the offenders as well by the Common Law, as by divers ſtatutes, may be arreſted and impriſoned, by the officers of Juſtice, and ſometimes by private perſons, (as hereunder followeth) without either Preſentment, Proceſſe, precept, warrant, or other commandement. And theſe being by the Law of the Realme, are warranted by the aforeſaid ſtat. of *Magna Charta*. See Co. 3. in. 2.

By a private man. And M. *Bracton lib.* 5. *in fine*, ſaith thus, *In criminalibus cauſis ubi ſequi debet capitale Iudicium, vita viz. vel mutilatio membrorum, non ſequitur Attachiamentum aliquod, ſed corpus talis (quicunque fuerit ille) ab omnibus arreſtetur, qui ſunt ad fidem Domini Regis, ſive inde Præceptum habuerit, ſive non habuerit.*

And yet you muſt obſerve, that for the arreſting of the body of a man in ſuch caſes, there muſt bee ſome juſt cauſe, or ſome lawfull and juſt ſuſpition at the leaſt: And therefore where a man is indicted of felonie, that is a good cauſe for any man to arreſt him. But if an appeale of

of felony be commenced against another, that is no sufficient cause, for it is but a private suspition, &c.

10.E.4.17. Also every private man may arrest another, whom he knoweth or seeth to have committed a robberie, manslaughter, or other felony, and may deliver him to the Constable of the Towne where such an offender is apprehended; or in the Constables absence may imprison and set him in the Fitz.Bar.10. stockes; and if there be no stockes there, it seemeth hee may carry the offender to the next Towne, and deliver him to the Constable there: See 9. *Ed.4.28.* or else he may carry him before a Iustice of peace, by him to bee examined, and sent to the gaole, there to abide, untill the next Assises, or Sessions of the peace, &c.

9.Ed.4.28. Also when a felony is committed, every man may arrest suspitious persons that be of evill fame, &c. and if such persons shall make resistance, the other may justifie to beate him.

But for the arresting of such suspitious persons, note, that there must be some felony committed indeed.

Also the party that shall arrest such suspected persons, must have a suspition of himselfe, and for the same felony; or otherwise, suspicion generally is no cause to arrest another. See *antea, tit. Examination. 5.H.7.4. & lib. Intrat. tit. fx. impris. div. 5.*

So that when any felony is done, every man that shall suspect another to be guilty thereof, may arrest him, See *5.H.7.4.b. Br. Faux imprif. 16.*

Any man suspecting another of a felony committed, or onely intended, may arrest him, so as thereupon hee commits him the Gaole, or carries him before a Iustice of peace. *9.E.4.26. 20.E.4.6. Vide Finch 127. & hic cap. 113.*

Also when a felony is committed, the common voyce and fame that *I.S.* did the felony, is sufficient cause for any man to suspect him, and to arrest him, *ibid.*

Also Huy and cry after *I.S.* for felony, seemeth to be sufficient cause to arrest him, though there be no felony committed, *ibid.*

Also Huy and cry is sufficient cause to arrest any suspitious person. *Br. fx. impris. 25.*

So when a felony is done, to be in company of the offenders, is sufficient cause to arrest him.

9.Ed.4.28. Nedham. So to live idely and vagrant. *Br. fx. imp. 22.* See *antea.*

29.E.3.39. 5.H.7.4. Also every man may arrest such as apparently goe about to commit any felony, and may imprison them. *Finch 127.*

Also, vpon huy and cry for stolne goods (*sc.* for a horse, or bullocke, &c. of such a colour, &c.) if *A.* be taken driving or leading, &c. such a horse, or such a bullocke, or having such other stolne goods about him, though hee bee a man of good name and credit, yet every man may apprehend and stay *A.* hereupon, and may deliver him to the Constables, by them to be set in the stockes, or safely kept, untill they can carry him before a Iustice of peace, that so he may be delivered by course of Law.

10.H.7.28. If any man shall bee dangerously hurt in an affray, (or otherwise) every man may arrest and imprison the offender, &c. What every private man may further do in any affray: See before, *tit. Affray.*

Unlawfull hunters in Parks, the Keepers or their servants, may for such offence justifie to arrest the offenders, and to cause them to depart, &c. *Lib. Intrat. & tit. Imprisonment. div.* 12.

Every man knowing of any that keepeth, or useth any gun, &c. contrary to the statute, may arrest them, and bring them to the next Justice of peace, &c. see *antea, tit. Guns.*

Nightwalkers, being strangers, or suspected persons, watchmen may arrest them, and may stay them till the morning, &c. see hereof *tit. Watch, antea.* Yea, every man may arrest such Nightwalkers, for it is for the good of the common wealth. *4. H. 7. 18. Br. False imprisonment* 15. see the stat. of *Winch.* 13. *E.* 1. *& 4. H. 7. fol.* 2. *& 5. H. 7. fol.* 5. *a.* Co. 9. 65.

But in all these cases before, where a private man shall arrest another, he ought thereupon to commit the prisoner to the gaole, or to carrie and deliver him to the Constable, or to some other officer, &c. see *20. E. 4. 8. Finch* 127.

By Officers. The Sherife, Bailifes, Constables, and other the King Officers may arrest and imprison offenders, in all cases where a private person may, and without any writ or warrant.

Where a constable may arrest one, &c. see hereof, *antea, tit. Conservators of peace, Affray, Forcible Entrie, & Examination.*

A Constable being informed of a lewd man and woman that are together in incontinence, may take with him so many of his neighbours as he will, to arrest the said man and woman to finde sureties for their good behaviour. *11. H. 7. 7. 13. H. 7. 10. his rep.* 75.

If a man makes an assault upon the Constable, he may justifie to arrest him that makes the assault, and to carrie him to the gaole for the breach of the peace, although the Constable be the party upon whom the assault was made. *5. H. 6. 7. Br. fit. imp.* 41.

The Justice of peace may arrest & imprison offenders in all cases where a private person may. See *His rep.* 8.

The Iustice of peace (upon his owne motion and discretion, or upon complaint) may also grant out his warrant, for the arresting (or conventing before him) of all such persons, as shall breake, or goe about to breake the peace, or as hee shall suspect to be inclined to breake the peace, and may commit them to prison, if they shall refuse to find, or cannot find sureties for to keepe the peace.

The Justice of peace (in divers cases) may in like sort grant out his warrant for the good behaviour, against offenders (as you may see before *cap.* 75.) and may commit them to prison for not finding sureties accordingly.

And these things the Justice of peace may doe by force of the commission, and of the statutes, 18. *Ed.* 3. *c.* 2. *&* 34. *Ed.* 3. *c.* 1.

If one commeth before the Justice of peace, upon his warrant for the peace, good behaviour, or for a riot, or the like, the Justice needeth not to demand suretie of him, but may commit him, if he doe not offer it. *Br. Peace* 7.

Also the Justices of peace upon their owne view, &c. of the offence, may imprison the offenders against divers penall lawes, as namely, such as keep

common

common Alehouses without licence, offenders for unlawfull games, ryoters, such as shall make any forcible Entries, or holdings of possessions, &c. see for these before, under their particular titles.

There be divers other offences, which by the statutes are committed to the Justices of peace (out of their Sessions) to heare and determine; And of which the offenders shall bee convicted, sometimes upon their owne confession before the Iust. and sometimes upon examination and proofe of witnesses; In all which cases the said Iust. of P. may convent the said offenders before them (by their proces or warrant) and after such examination and conviction, they may imprison, or otherwise punish the offenders, according as they are are limited by the said statutes. See before *Hic cap. 66.*

Whersoever the Iustice of peace hath power, or authority given him by any statute to bind over any man, or to cause a man to doe any thing, if such person (being in his presence) shall refuse to be bound, or to doe such thing, it seemeth such Iustice may send such person to the gaole, there to remaine till he shall perform the same. See hereof *antea, tit. Recognisance.*

11 H. 6. 11 H. 7. 19. In what cases the Kings officer may breake open a mans house, for to arrest an offender. See hereof *tit. Forcible Entries cap. 8.*

All men being required, ought to assist the Kings officers, to pursue, and arrest offenders against the peace, &c.

If the partie against whom any lawfull warrant is granted, shall make *resistance*, resistance, or shall make an assault upon the officer, or shall fly; the officer may justifie the beating and hurting of him, and may also imprison him in the stocks for the same: But if the partie resisteth or flyeth, before hee be arrested, the officer cannot justifie the beating of him. 2. *Ed.* 4. 11. *Br. Thesp.* 296.

If the warrant were to arrest or take one that standeth indicted of felony, then may the officer justifie the killing of such a person, if hee shall resist, or flie; or that he cannot be otherwise taken. See *hic antea, Homicide tolerated.*

5 H. 4. 10. 9. Prison 1. None shall be imprisoned by any Iustice of peace, but onely in the common gaole, by the statute of 5. *H. 4. & 23. H. 8. cap. 2.* *Imprisonment.*

Co. 4. 119. b. And therefore Iustices of peace cannot commit felons to any of the Counters of London, nor to other prisons which be no common Gaoles, nor make a gaole of their owne houses. *The Fleet.*

And yet Iustices of peace may commit to the stocks some offenders against certaine penall statutes; As townsmen tipling in Alehouses, &c. See hereof *antea, tit. Alehouses.*

Persons refusing to worke in hay & harvest time. See *antea, tit. Labourers.*

And in some cases the Iustices may commit an offender to safe custodie by his discretion. *Vide antea, tit. Preachers.*

Also in some cases the Iustice may send offenders to the house of Correction, and there to be continued for any reasonable time, at the discretion of the Iustice. See *antea, tit. Rogues, & hic cap. 125. fine.*

Lamb. 136. Crom. 169. The Sheriffe or gaoler may imprison a felon, or other prisoner in their owne house, or in the common gaole at their pleasure. *Tamen quere, & vide Cromp.* 184. that the gaole is the Kings prison, and that for causes

touching the King, offenders shall be sent thither.

The Constable (or other such officer) cannot imprison any man in his house, (as it seemeth) but in the stocks; and that not above such a reasonable time, as he may provide convenient aid safely to convey the Prisoner to the Iustice, or gaole. *Fitzh.* 20 Ed. 4. 6. 22 Ed. 4. 33. 3 H. 4. 9.

And yet in case of an Affray, &c. the Constable may for a time imprison the offender, being a man of quality, in the Constables owne house, or may commit him to some other safe custody. *Vide hic eap.* 1.

If a man commit felony in one County, and be arrested for the same in another County, he shall bee imprisoned in that County, where hee is taken. *Vide antea, tit. Felonie, & 11. E. 4. fol. 4. Br. tit. Impr.* 25.

The Iustice of peace, Constable, or other officer pursuing a felon into another County, takes him there; the felon shall bee committed to the gaole of the county where he was taken: for the Iust. of peace or officer being out of his county, hath no more authoritie than a private man. *Vide antea tit. Accessaries & Felony. Br. fresh suit.* 3. & *Plo.* 37 a. 13 H. 4. 3.

Also if the Constable (or other officer) shall see an affray, and he coming to arrest them, the affrayors doe flie into another County, the officer (as every other private person) may pursue them into the other County, and may stay or arrest them there; but the officer cannot bring them out of that County, but must carry the affrayors before some Iust. of peace of the same County where they were taken, &c. But if the affray be in one towne, and the affrayors doe flye into another towne, or into a franchise or liberty within the same county, the officer may pursue them, and take them out of the franchise &c. by fresh suit. *Vide antea, tit. Affray.*

But if the Constable hath arrested one upon a warrant from a Iustice of peace, and after the arrest the party escapeth (of his owne wrong) & fleeth into another county, the Constable may pursue and take him in the other county by fresh suit, and bring him before the Iustice of peace upon whose warrant he was first arrested, as it seemeth. See *Crom.* 172. 173. & *antea, tit. Felony by Statute.* See 2 H. 7. Br. Trel. 198

If a prisoner taken in execution shall make an escape of his own wrong, and shall flie out of sight, & into another County where the Sheriffe hath no power, yet the Sheriffe, &c. upon fresh suit, may take him againe in any other County, and he shall bee still said to be in execution, yea without fresh suit, the Sheriffe, &c. may take him againe, and keepe him untill he hath agreed with him: otherwise, if the escape were by the consent of the Sheriffe, &c. *Co.* 3. 52. *Br. Escape* 4. 12.

Now for the conveying of prisoners to the gaole, it must be at the proper charge of the prisoners, if they have meanes or abilitie thereto, otherwise it must be at the charge of the towne where they are taken. 23 *Iac. c.* 28. & 3 *Caroli* 4. 4. Iac. cap. 10. F. Prison 47

And if a man be arrested for felony, and the Constable shall carry him to the Gaole, and the Gaoler will not receive him, the Constable must bring him backe to the towne where he was taken, and that towne shall be charged with the keeping of him untill the next Goale deliverie, by the opinion of the Booke 10. *H.* 4. or the Constable or other party that arrested him, may in such case keepe the prisoner in his owne house, as it seemeth, 10. H. 4. 9. F. Esc. 8.

ſeemeth. See 11. E. 4. *Br. Faux Impriſ.* 25. *fine.*

P. Priſon 6. 4. Ed 3. 10. But the Gaoler denying to receive a felon by the delivery of any Conſtable or townesſhip; or taking any thing for receiving ſuch, ſhall be puniſhed for the ſame by the Juſtices of gaole delivery.

Co. 8. 119. Fla. 17. b. When a ſtatute doth appoint impriſonment, but limits no time when the offender ſhall be impriſoned, then he is to be impriſoned preſently; as in caſe of a force, the Juſtices of peace upon view thereof, ought to commit the offenders preſently; for after they may not commit them. *The Time.*

Crom. 171. Alſo when a ſtatute doth appoint impriſonment, but limits no time how long, there the priſoner muſt remaine at the diſcretion of the Court.

Where a ſtatute doth ordaine, that an offender ſhall be impriſoned at the Kings pleaſure. *Vide antea, tit. Bailment.*

Where a ſtatute ordaineth that a priſoner ſhall not be delivered without the Kings ſpeciall commandement, and that upon a fine to be made to the King; who may aſſeſſe the ſame fine, and deliver him: ſee 18. *H.* 8. 1.

Br. Impriſ. 100. Co. 11. 43. But impriſonment to be inflicted by the Juſtice of P. almoſt in all caſes (except for the Peace, the good behaviour, or for felony, or higher offences) is but to retaine the party untill he hath made fine to the King for his contempt or offence; and therefore if he ſhall offer to pay his fine, or ſhall find ſureties by recog. to pay it, he ought to be delivered preſently, 2. *Mar.* 1. *The manner.*

Co. 8. 100. & 3. 67. Now for the manner of impriſonment, it ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution (or but for a treſpaſſe, or other offence) every gaoler ought to keepe ſuch his priſoner, *in ſalvâ & arctâ cuſtodia*; *Salva*, *ſc.* that he ought to be impriſoned ſo ſurely, as that he cannot eſcape; *Arctâ*, in reſpect that he ought to be kept cloſe, without conference with others, or intelligence of things abroad.

Co. 3. 44. And therefore if the gaoler ſhall licence his priſoner to goe abroad for a time, and then to come againe, or to goe abroad with a keeper, though he come againe, yet theſe are eſcapes: and if the priſoner were in for felony, this is fineable in the gaoler at the leaſt, if it be not felony; and if the priſoner were in upon an execution, this is ſo penall to the officer, as that he ſhall be charged for the debt; and if the priſoner were in but for a treſpaſſe, yet the officer is fineable: for impriſoment was ordained for a puniſhment of offenders, and in terror of all others, *ut pœna ad paucos, metus ad omnes perveniat. Vide antea, tit. Felony by ſtatute. cap.* 106.

1 R. 2. c. 12. 7 H. 4. cap. 4. And yet ſee *Co. L.* 260 That impriſonment muſt be *Cuſtodia, & non pœna*; for *Carcer ad homines cuſtodiendos, non ad puniendos, dari debet*: But yet it ſeemeth meet and juſt, that it ſhould be *pœna*, alwell as *Cuſtodia*, *ſc.* for Malefactors, that it ſhould be a puniſhment to them, and a terror to others; and for debtors, that they may the ſooner pay or take order with their Creditors.

For, as one ſaith, *Maxima illecebra peccandi impunitatis ſpes*, A great impulſive cauſe of offence, is the hope to eſcape unpuniſhed: And ſo a great cauſe that Debtors care not to pay, nor to take order with their Creditors, is their hope to eſcape impriſonment, or of too much favour & liberty in priſon.

Also (by the law) those which are in execution, ought not to goe at liberty within the prison, nor abroad with their keeper, 24. *H.* 8. much lesse in cases of felony, or of higher offences. Dyer 249. Co. 3. 44.

Also by the statute of West. 2. *ca.* 11. Accomptants, & such as are in execution, the Sheriffe or Gaoler may put irons or fetters upon them: & yet if the gaoler shall imprison a man so straitly, by putting him in the stocks, or putting more irons upon him than is needfull, or keepeth his victuall from him, whereby the prisoner becommeth decrepit, lamed, or otherwise diseased, he shall have an action of the Case against the Gaoler: and if the Gaoler shall keepe his prisoner more streight than of right he ought to doe, so that the prisoner dyeth thereof, this is felony in the gaoler. *Hic cap.* 107. *Verbo Gaoler.* Co. ibid. F. Accomp. 12. Fitz. 93. h.

Also the Constable or other such officer, that shall imprison in the stocks, any offender, for felonie or suspition thereof, may locke the stocks, and if need be, may also put irons on him, as it seemeth; and when hee conveyeth him to the gaole, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

It seemeth by *Britton, fol.* 17. that by the common Law (before the statute of *West.* 1.) none should have irons put on them, but such offenders as were taken for felonie, or trespasses in Parkes. But the words of the statute of *West.* 2. *cap.* 11. are generall, *quod Carceri manucipentur in ferris*, which word, *Carceri*, seemeth to signifie any persons imprisoned for any cause, (or any persons worthy of the prison,) and is not to be restrained to Accomptants onely. See *Cok.* 3. 44. Kit. 69.

Also by the statute 7. *Iacobi Regis*, all Rogues, Vagabonds, sturdy beggers, and other idle and disorderly persons, sent to the house of correction, may (by the maister of such house) be punished by putting fetters or gyves vpon them. 7. Ia. 4.

Posse Comitatus. CAP. 119.

WHere the Just. of P. Sheriffe, or other officer, is enabled to take the power of the County, it seemeth, they may command, & ought to haue the aid and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, servants, and apprentices, and of all other such persons, being above the age of 15. years, and that are able to travell. Lamb. 308.

But women, Ecclesiasticall persons, and such as be decrepit or diseased of any continuall infirmitie, shall not be compelled to attend them.

And in such cases it is referred to the discretion of the Iustices of Peace (or Sheriffe, &c.) what number they will have to attend upon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not justifiable for the Just. of P. Sheriffe, or other officer, to assemble *Posse Comitatus*, or raise a power or assembly of people (upon their owne heads) without just cause. *Vide antea, tit. Ryots.*

What

What Persons may take Posse Comitatus, *and in what Cases.*

ANy Justice of peace, or Sheriffe, may take (of that County where he is a Justice, or Sheriffe) any number that they shall thinke meet to pursue, apprehend, arrest, and imprison traitors, murderers, robbers, and other felons; or such as doe breake, or goe about to breake, or disturbe the Kings peace; and every man (being required) ought to assist and aid them. *Vide antea, tit. Forcible Entry, and Felony.*

The Just. of P. (and the Sheriffe, or Under-sheriffe) may take *Posse Comitatus* for the suppressing of ryots, and all sorts of persons (being able and required) ought to assist them therein. *Vide antea, tit. Ryots.*

14. H. 7 8. Yea, any one Justice of peace may take the power & aid of the county, to suppresse ryoters, and needs not to tarry for the comming of another Justice, or of the Sheriffe.

Also in cases of forcible Entry, any Justice of peace may take *Posse Comitatus* to remove such persons as by his view, or by inquisition taken before him, shall bee found to have made any forcible Entrie into other mens possessions, or to detaine them with force. *Vide antea, tit. Forc. Entr.*

P. Recus. 52. Also the Sheriffe, or other officer, upon any lawfull warrant, for the apprehending of any Popish Recusant, &c. may take *Posse Comitatus, &c.* See the statute 3. *Iac. cap.* 4.

3. H. 7 1. 10. Co. 5. 115. F. Distr. 4. F. Retor. 5. Br. Fin. p. 37. Br. Riots 2. 3. The Sheriffe, Under-sheriffe, or Bailife, &c. (if need be) may by the Common Law, take the power of the Countie (what number they shall thinke good) to execute the Kings processe or Writ, be it a writ of execution, *Replevin*, *Estrepement*, *Capias*, or other Writ, it being the Kings commandement. (See also the stat. *West.* 1. 17. 17 *West.* 3. 39.)

And such as shall not assist them therein (being required) shall pay a fine to the King.

3. H. 7. 1. Br. Tref 266. & Riots 2. The Sheriffes Bailife, to execute a Replevie, took with him three hundred men armed (*modo guerino, &c.*) with Brigandines, Jacks, and Guns, & it was holden lawfull: for the Sheriffes officer hath power to take assistance, as well as the Sheriffe himselfe, for that all is one office, and one authority.

A man demands the peace in the Chancerie against a great Lord, & hath a *Supplicavit* directed to the Sheriffe: there, if need shall be, the Sheriffe may take *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, tit. Surtie for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Just. of peace, the Just. of peace, or the officer to whom the Just. of P. shall make his Warrant in this behalfe, (upon resistance made) may (if need be) take *Posse Comitatus* to aid him to arrest the partie: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud Co.* 5. 115.

But every Sheriffe is inabled besides by his Writ of Assistance, whereby there is commandement (under the great seale) to all Archbishops, Dukes, Earles, Barons, and all other the Kings subjects within the same County, to be aiding to him in whatsoever belongeth to his office, &c.

The Sheriffe may take *Posse Comitatus* to apprehend felons, &c. or disturbers of the peace. *Vide antea, tit. Forcible Entrie.*

So

So he may take *Posse Comitatus*, to execute the precept of the Justice of peace *ibid.*

The Constable (of a towne) upon a felony committed, or upon any affray, or the like, may take the aid of his neighbours, or other persons being present, to apprehend the felons, or to cause the peace to be kept, and to carry the offenders before the Just. &c. See *Br. Riot.* 3. 5. H. 7. 10. 13. H. 7. 10. 8. Trel. 432.

One hath hurt another whereby he is in perill of death, the Constable may take power or aid to arrest him, &c. 38. E. 3. 8.

So may the Constable take the aid of his neighbours, for executing of the Justices Warrant directed to him.

Yea all and every such persons as are conservators of the peace by the common Law, (*sc.* every pety constable, high Constable, Coroner, Sheriffe, Steward of a Leet, or of a Court of Pipowders, steward of the Sheriffes Torne, & other Judge in any Court of Record) may command and take the meet helpe, aid, and force of others, to pacifie, and to arrest all such, who in their presence, and within their jurisdiction, shall goe about to breake the peace by deed or word.

Every man may assemble his friends and neighbours to defend his person, &c. (being in his house) against violence, &c. but not to goe abroad with him to a Faire or market, &c. *Vide antea, tit. Forcible Entry.* Co. 11. 81. 21. H. 7. 38.

Certaine Advices to the Justices of Peace. CAP. 120.

I Thought it not amisse here shortly to admonish the Justices of peace again, of some few things mentioned before, for their better memory.

1 First, that they exercise not the office of a Justice of peace, before they have taken the Oath of their office, and the oath of Supremacie. *Vide antea, tit. cap.* 4.

2 That they execute not this their office in their owne case, but to cause the offender to bee convented, or caried before some other Justice, or to desire the aid of some other Justice being present; *quia iniquum est aliquem suæ rei esse Judicem. Cok.* 8. 118. And some late statutes have taken speciall care to prevent this, as you may see *hic tit. Tresp. &c.* Crom. f. 61. Dit. 212. Co. 4. 55. b.

Besides, *idem non potest esse Agens & patiens.* 14. *H.* 8. 31. And when a man is a party, he cannot be a Judge indifferent. 8. *H.* 19. *Auxi ad estre sovent view, que Justice de peace que ad execute serra Office en son Case demesne, ad estre punny pur ceo in Camera stellata. Cromp.* 68.

3 That they be carefull for the execution of the statute of Ryots. *Vide antea, tit. Ryots, Cap.* 46.

If upon their inquirie of a Ryot the truth cannot be found, by reason of any maintenance, &c. that they certifie the same within one moneth. *Ibid.*

4 That upon a forcible Entry, they make no restitution, without Enquirie. *Vide antea, tit. Forcible Entry.*

5 That upon notice of any treason, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the privie Councell. *Vide tit. Treason.*

6 That they bee circumspect in bailing of prisoners, *viz.* that they neither

neither denie it to such as are baileable, nor yeeld it where it is not grantable. *Vide hic bailement.*

7 If any felony be committed, and one is brought before the Iustice of Peace upon suspition for the same, though it shall appeare to the Iustice that the prisoner is not guilty of that offence, or that it is not felony of death, yet he may not set him at liberty, but so as he may come to his triall. *Vide antea, tit. Felony by Statute, and Evidence against Felons.*

8 That all Recognisances taken by them, be in the Kings name.

9 That all Recognisances taken by them, be certified at their next quarter Sessions, or gaole delivery, according as the case shall require.

10 That they meet at every Easter Sessions at the least, *vide 5. El. cap. 4. P. Iust. 67.* And yet their presence and attendance at every generall Sessions is very requisite.

11 That their examinations taken concerning the misentring of Plaints in County courts, or the defaults of gathering the Shire Amerciaments, be certified into the Exchequer, &c. *Vide antea, tit. Sheriffes.*

12 That such offences as the Surveyours of Highwayes shall present to them, they againe present at their next quarter Sessions. *Vide antea, tit. Highwayes.*

13 That the oathes taken by them upon the submission of any Recusant, be certified at their next quarter Sessions. *Vide ante, tit. Recusants.*

14 Also that they doe justice, and give remedy to every party grieved, in any thing that lieth within their power, to heare, determine, or execute, and that without respect of persons, & according to the lawes and statutes of this Realme: *Vide antea, cap. 4.*

Note, that all these former matters are penall to the Iustices of P. if they shall offend in any of them, and therefore it is likely they will be the more carefull therein. But there are certaine other things principally tending to the publike good, & lately commended from his Majestie, (by the Iudges of Assise) to the care of the Iustices of peace; in all which the Iustices of peace are to imploy also their speciall care and diligence; and they are shortly these ten articles following.

1 Alehouses; the abuses there to be reformed, and such as be unlicenced to be suppressed.

2 Highwayes, and Bridges to be amended.

3 Huy and Cry, and fresh suit to be duly made, & pursued after robbers, and other Felons.

4 Labourers: *sc.* idle persons meet to serve, to be compelled to goe to service.

5 Poore; their children to be placed Apprentices; such as are able of body, to be holden or set to worke.

6 Recusants; first Popish Recusants (especially such as have beene reconciled to the Pope, or drawne to the Popish Religion, since the Gunpowder Treason, for these are by his Majestie accounted most dangerous) that these be certified into the Kings Bench, and further to be dealt withall (by the Iustices of the peace) according to the severall Statutes in that behalfe made.

Also negligent Recusants, which shall not resort every Sunday to Church,

Church; that such bee punished according to the statute; for the first and best meanes to bring men to God, is to bring them to Church.

7 Rogues and Vagabonds, to be duly punished.

8 Houses of correction, to be maintaind.

9 Watch to be duely kept.

10 Weights and measures, the abuses therein to be reformed.

Further, the Justices of peace are to be carefull that they suffer not the King to be disadvantaged, where it lyeth lawfully in their power to prevent it, *vide Lamb.* 521.

Also that they remember, how that they exercise not the judgements of men only, but of God himselfe (whose power they doe participate, and who is alwayes present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But forasmuch as most of the businesse of the Just. of peace (out of Sessions) consisteth in the execution of divers stat. committed to their charge, which stat. cannot be sufficiently abridged, but that they will come short of the substance & body thereof, therefore it shall be safest for the Justice of peace not to relie overmuch upon these short collections thereof, but to have an eye to the Abridgement of statutes, or rather to the booke of Statutes at large, and thereby to take their further and better directions for their whole proceedings: for (as Sir *Ed. Coke* observeth) Abridgements are of good and necessary use to serve as Tables, but not to ground any opinion, (much lesse to proceed judicially) upon them: *Idco*, saith he, *satius est petere fontes quam sectari rivulos. Coke.* 10. 117. *b.*

And lastly, for the better encouragement of Justices of peace, Constables, and other officers (and of all others which in their aide, or assistance, or by their commandement shall do any thing touching his or their office) who (by causelesse suits commenced by contentious persons against them for executing their offices) have lately beene discouraged from doing their offices (with that courage, care and diligence, which is required at their hands) now for their ease in pleading, they are by the stat. 7. & 21. *Iacobi*, allowed to plead the generall issue of Not-guilty, and to give the speciall matter in evidence, and for their wrongfull vexation double costs. And for all Actions, &c. to be brought against any Iustice of peace, or other officer, (or other person which in their aide, &c. shall doe any thing concerning their office) the said Action, &c. shall be layed within the County, where the fact shall be done, and not elsewhere, &c. 21 *Iac. Reg. cap.* 12. 7. Iac. cap. 5. 21. Iac. ca. 12. 3. Caroli ca. 1.

Et nota quicquid Iustic. fecerit de Record ignoranter, & pro defectu scientiæ, non erit pro eo punitus, Nec pro re per ipsum facta judicialiter. 2. R. 3. fol. 10. Mr. les Iustices d' Assise poient oyer, & punier les defaults de Iustices de Peace, &c. lour contempts, omissions, negligences, favours, affections, corruptions, & autres defaults quæcunq.

Warrants

Warrants, and Preſidents. Cap. 121.

THe Warrants of the Juſtices of peace, may be ſtyled and made after divers manners, As

1 Firſt, in the name of the King, and yet the *Teſte* may be under the name of the Juſtice (or Juſtices) of peace, that grant them out.

2 Or they may be ſtiled and made onely in the names of the Juſtices.

3 Or they may bee made without any ſuch ſtyle, and onely under the *Teſte* of the Juſt. of peace, or onely ſubſcribed by the Juſt. as followeth.

In the Kings Majeſties name.

The Style. CHARLES by the grace of God, &c. To our Sheriffe of our County of Cambridge, the High Conſtables of the Hundred of Radfield, the pety Conſtables of the Towne of Ballham, and to all and ſingular our Bailifes & other Miniſters in the ſaid Countie, aſwell within liberties as without, Greeting. Foraſmuch as A. B. of, &c. hath come before Sir *Edward Peyton*, Knight and Baronet, one of our Juſtices of peace within the ſaid County, and hath, &c. (concluding it in the Juſtices name, as thus) Witneſſe the ſaid *Edward Peyton*, at Illeham, the day of &c. *Cantabr.*

The Teſte. Note, that whereſoever the Warrant is made in the Kings name, (as before) there it ſeemeth the Warrant ought to be directed to all Miniſters, as well within liberties as without, for that the King is made a partie: and ſo it may bee done in all other warrants (eſpecially for felony, or for the peace, or the good behaviour, &c.) becauſe it is the ſervice of the King, and no libertie or franchiſe ſhall be allowed, or hold place againſt the King. *Br. Franch.* 31. Yet ſee before, that the Juſtices of peace of the County may not intermeddle in any City, Towne, or libertie, which have their proper Juſtices. *Hic cap.* 6.

Or thus, in the name of the Iuſtice himſelfe.

MYles Sandys, Knight and Baronet, one of the Juſtices of the peace of our Soveraigne Lord the King, within the ſaid Countie; To the Sherife of the ſaid County, to the Bailife, or Conſtables of the Hundred of, &c, to the pety Conſtables of the Towne of F. within the ſaid Hundred, and to all other the faithfull Miniſters and Officers of our Soveraigne Lord within the ſaid County, and to every of them, Greeting. Foraſmuch as, &c. Given under my hand and Seale, at the day of &c. *Cantabro.*

Or they may be directed to any of theſe Officers (above named) particularly, or elſe to any other indifferent perſon, or perſons, as followeth.

Chriſtopherus Hatton miles & Baronettus, unus Cuſtodum pacis Dom. Regis in Com. Cantabr. Vic. ejuſdem, ſalutem. Vel ballivo Hundred. ejuſdem Com. ſalutem: vel ballivo Hundred. de R. & Ch. in Com. pred. ſalutem: vel B. C. & D. E. conſtabl. Hundred. de W. ſalutem: vel Conſtab. (generally) *Hundred., or ville de H. ſalutem: vel F. G. & H. I. Conſtabul. ville de H. &*

eorum

eorum cuilibet ſalutem: vel ſic, Dilectis ſibi K.L. & M.N. & eorum cuilibet conjunctim & diviſim ſalutem, &c.

A Warrant for the Peace.

Cantabr. CHARLES by the grace of God, &c. to our Sheriſe, &c. For as much as A. B. of, &c. Yeoman, hath perſonally come before Sir *Iohn Carleton* Barronet, one of our Juſtices of the peace within the ſaid county, and hath taken a Corporall oath, that he is affraid that one C.D. of in the ſaid County, Yeoman, will * beat (wound, maime, or kill him, or burne his houſes;) and hath therewithall prayed Suretie of the peace againſt the ſaid C. D. therefore wee command and charge you joyntly and ſeverally, that (immediately upon the receit hereof) you cauſe the ſaid C.D. to come before the ſaid Sir *Iohn Carleton*, or ſome other of our Juſtices of the ſame county, to find ſufficient ſurety and mainprize, as well for his appearance at the next Quarter Seſſions of our peace to be holden at the Caſtle of Cambridge, or elſewhere, for, or in the ſaid County; as alſo for our peace to be kept towards us, & al our liege people, and chiefly towards the ſaid A.B. that is to ſay, that hee the ſaid C.D. ſhall not doe, nor by any meanes procure or cauſe to bee done, any of the ſaid evils, to any of our ſaid people, and eſpecially to the ſaid A.B. And if the ſaid C. D. ſhall refuſe thus to doe, that then immediately (without expecting of any further Warrant) you him ſafely convey, or cauſe him to bee conveyed ſafely to our next priſon in the ſaid County, there to remaine untill he ſhall willingly doe the ſame: (ſo that he may be before our ſaid Juſtices, at the ſaid next generall Seſſions of the peace to be holden at Cambridge aforeſaid, then and there to anſwer unto us for his contempt in this behalfe.) And ſee that you certifie your doings in the Premiſſes to our ſaid Juſtices at the ſaid Seſſions, bringing then thither this precept with you. Witneſſe the ſaid *Iohn Carleton*, at aforeſaid, the fourth day of Auguſt, &c.

* Any one of theſe cauſes is ſufficient.

Or thus, in the name of the Iuſtice himſelfe, Mutatis, mutandis.

Cantabr. *OLiver Cromewell*, Knight, one of the Juſtices of peace of our Soveraigne Lord the King, within the ſaid County, to the ſheriffe &c. Greeting. Foraſmuch as A.B. &c. hath perſonally come before mee, and hath taken a Corporall Oath, &c. *ut ſupra*. Theſe ſhall be therefore on the behalfe, and in the name of our ſaid Soveraigne Lord, to command you jointly, &c. that you cauſe the ſaid C. to come before mee, or ſome other of his Majeſties ſaid Juſtices of Peace, in the ſaid County, &c. *ut ſupra*. Given under my ſeale at aforeſaid, &c.

For the peace.

Or thus.

OLiv. Cromewell, Miles unus Cuſtod' pacis Dom. Regis in Com' Cant. Vicecom', &c. ſalutem, Quia A. B. coram me ſacrament' preſtitit Corporale, Quod ipſe metuit ſibi dampnum de corpore ſuo per I.S. de facili poſſe venire: Or thus: *Quod ipſe de vita ſua, &c. per I.S. graviter, & manifeſte comminat' exiſtit, &c.*

Or

Or thus: *Quod ipſe metuit de vita ſua, (ſive de mutulatione membrorum ſuorum; ſive de incendiis domorum ſuarum) per Io. S. &c. Ideo ex parte dom' Regis vobis & cuilibet veſtrum mando, Quod attachiat' præd. I. S. (per corpus ſuum) Ita quod eum tam citius quam captus fuerit perſonaliter ducatis coram me vel uno ſociorum meorum cuſtod' pacis Domini Regis ad inveniend' ſufficient' ſecuritat' de pace gerend' erga Dominum Regem, & cunctum populum ſuum, & præcipue erga præd' A. B. viz. quod ipſe dampnum vel malum aliquod præd' A. B. aut alicui alio de populo domini Regis de corporibus ſuis, mutulatione membrorum ſuorum, necnon de incendio domorum ſuarum non faciet, nec fieri procurabit quoviſmodo: & ſi hoc coram te recuſaverit, tunc ipſum I. S. uſque ad prox. gaolam domini Regis infra dict' Com' duci fac' ipſum ibidem ſub arcta cuſtod' moratur' uſq; ad proximam Seſſionem ipſius domini Regis de pace in Com' præd' tenendam: & hoc nullatenus omittas ſub pœna incumbent' & tu ipſe ſis ibidem, & habeas hoc mandatum. Dat' apud, &c.*

Or thus.

I. C. miles, unus Iuſt' domini Regis de pace in Com' Cantabr' conſervand' aſſign' vic', &c. ſalutem, Ex parte dom' Regis vobis & cuilibet veſtrum mando, quod attachiat' ſeu unus veſtrum attachiat I. S. de, &c. Ita quod habeatis ſeu unus veſtrum habeat corpus ejus coram me, vel uno ſociorum meorum, &c. ad inveniendum ſufficientem ſecuritatem pacis, quod ipſe non fac' nec fieri procurabit quoviſmodo aliquod dampnum corporale alicui de populo domini Regis, nec de incendio domorum ſuarum, & præcipue erga A. B. qui de vita & mutulatione membrorum ſuorum, necnon de incendio domorum ſuarum per præd' I. S. graviter & manifeſte cominat' exiſtit prout mihi ſacrar' præſtitit corporal' & ſi hoc recuſaverit, tunc eum gaolam domini Regis de Com' præd' duci faciatis ſeu unus veſtrum duci faciet ibidem moratur' quouſque hoc gratis facere voluerit. Et qualiter hoc mandatum fuerit executum mihi & ſociis meis (cuſtodes pacis Com' præd') ad proximam ſeſſionem pacis in Com' præd' tenend' certific', & habeas ibid' tunc hoc præceptum. Sigillo meo ſigillat' datum, &c.

Alias.

A. B. unus Iuſtic', &c. ex parte domini Regis tibi mando, quod non omittas propter aliquam libertatem Com' prædict' quin attachias I. S. de, &c. & eum ſalvo cuſtodire fac' ita quod habeas corpus ejus ad proximam ſeſſionem pacis in Com' præd' tenend' ad inveniend' tunc & ibidem ſufficientem ſecuritatem de pace erga dictum dominum Regem & cunctum populum ſuum, & præcipue erga N. S. &c. ut antea.

Another for the Peace.

To the Conſtables of, &c. and to either of them.

FOraſmuch as B. A. the wife of W. A. of your ſaid towne, laborer, hath required ſurety of the peace againſt T. B. of your ſaid town, Butcher, and withal hath taken her corporal oath before me, that ſhe required the ſame not for any private malice, hatred, or evill will, but ſimply that ſhe is affraid of her life, (or the hurting or maiming of her body, or the burning of her houſes;) theſe are therefore to will and require you, and in his Majeſties name to charge and command you, that immediatly *Cantabr.*

upon the ſight hereof, you, or one of you, * require the ſaid T.B. to come before me, or ſome other of the Kings Majeſties Juſtices within the ſaid countie, to find ſufficient ſureties, as well for his appearance at the next generall Quarter Seſſions of the peace to be holden for this Countie, as alſo that the ſaid T.B. ſhall in the meane time keep the Kings Majeſties peace, as well towards his ſaid Majeſtie, as towards all his leige people, and eſpecially towards the ſaid *B.A.* And if he ſhall refuſe ſo to doe, that then immediately you do convey the ſaid T.B. or cauſe him to be conveyed unto the Kings Majeſties gaole at the Caſtle of Cambridge, there to remain untill he ſhall willingly doe the ſame. And ſee that you certifie your doings in the premiſſes to the Juſt. at the ſaid Seſſions, and have you there this Warrant. Dated at, &c.

* See before tit. Arreſt.

Or thus.

FOraſmuch as B. the wife of W.A. of your ſaid towne, hath perſonally come before me (I.C. Knight, one of the Kings Majeſties Juſtices of the P. for the ſaid Countie of C.) and hath taken her corporall oath, That one T.B. of your ſaid towne hath already aſſaulted, beaten and bruiſed her the ſaid B. and further hath threatned her in ſuch ſort, that ſhe is afraid that the ſaid T.B. will beat, wound, maime, or kill her, or do her ſome other bodily harme; and thereupon ſhe the ſaid B. hath prayed ſecurity of the P. to be had or granted her, againſt the ſaid T.B. Theſe are therefore to will and require you (&c. *ut ſupra*) to find ſufficient ſureties (or to bee bound with two ſufficient ſureties) for his perſonall appearance at the next generall quarter Seſſions of the peace to be holden for this Countie, then and there to anſwer the premiſſes, and in the meane time that he the ſaid T.B. keepe the peace towards our ſaid Soveraigne Lord the King, and all his liege people, and eſpecially againſt the ſaid B. And if he ſhall refuſe thus to doe, that then, (&c. *ut ſupra.*)

A Warrant for the Peace upon a Supplicavit.

Cantabr. CHriſtopher Hatton Knight, one of the Juſtices of the P. of our Soveraigne Lord the Kings Majeſtie within the Countie of Cambridge, to the Sheriffe of the ſaid Countie, the High Conſtables of the Hundred of R. the petie Conſtables of the towne of B. and to all and ſingular the Kings Majeſties Bailiffes, and other Miniſters, as well within Liberties as without in the ſaid Countie, and to every of them, Greeting. Know ye, that I have received the Commandement (or Writ) of our ſaid Soveraigne Lord (in theſe words, (reciting the whole writ of *Supplicavit:* or only reciting the effect of the *Supplicavit*) thus, to compell A. B. of &c. to finde ſufficient ſuretie for his Majeſties peace, by him to be kept, towards, &c.) And therefore on the behalfe of our ſaid Soveraigne Lord I command and charge you, joyntly and ſeverally, that immediately upon the receit hereof, you cauſe the ſaid A.B. to come before me at my houſe in Chevely, to find ſufficient ſuretie and mainpriſe for the peace, to bee kept towards our ſaid Soveraigne Lord, and all his liege people, & eſpecially towards the ſaid C.D and if the ſaid A.B. ſhall refuſe thus to doe, that then you him ſafely convey, or cauſe to be ſafely conveyed, to his Majeſties gaole at the Caſtle of Cambridge (or to the next gaole of his Majeſtie in

in the ſaid Countie) there to remaine untill that he ſhall willingly doe the ſame; ſo that he may be before the Juſt. of the P. of our ſaid Soveraigne L. within the ſaid county, at the next generall Seſſions of the Peace to be holden for the ſaid Countie, there to anſwer to our ſaid Soveraigne Lord for his contempt in this behalfe. And ſee that you certifie your doings in the premiſſes, to the ſaid Juſtices at the ſaid Seſſions, bringing then thither this Precept with you. Yeoven at aforeſaid, under my hand and ſeale, the fourth day of, &c.

The Returne of this Writ, and Certificat of the Juſtices doings herein: ſee here before in the Title of *Surety for the Peace, pag.* 73.

A Warrant for the good behaviour.

FOraſmuch as A.B. of your ſaid Town is not of good name or fame, nor of honeſt converſation (but *an evill doer, a Riotor, Barretter, and perturbet of the peace of our ſaid Soveraigne Lord) as we are given to underſtand by the complaint of ſundrie credible perſons. Therefore on the behalfe of our ſaid Soveraigne Lord wee command you, and everie of you, that immediately, &c. you cauſe the ſaid A.B. to come before us, or ſome other of our fellow Juſtices, to find ſufficient ſuretie and mainpriſe, as well for his good abearing towards our ſaid Soveraigne Lord and all his liege people, untill the next quarter Seſſions of the Peace to be holden in the ſaid County, as alſo for his appearance then and there. And if he ſhall refuſe ſo to doe, that then, &c. (as in the Warrant for the Peace.)

Cantabr.

*Any one of theſe is ſufficient, or any other like cauſe: whereof ſee hic cap 73.

Or thus.

FOraſmuch as wee have beene credibly informed that S.W. of your Towne, &c. is a man of evill behaviour, one that daily moveth diſcord, ſtrife, and diſſention among his Neighbours, and a common perturber of his Majeſties peace: Theſe are therefore in the Kings Majeſties name to command you, &c.

Cantabr.

Another Warrant for the good behaviour.

IOhannes Peyton *Miles*, & Iohannes Cutts *Miles, Iuſticiarii Domini Regis nunc ad pacem in Comitat' prædict' conſervand' aſſignat', vic' Com' prædict', Necnon omnibus & ſingulis Ballivis, Conſtabular', cæteriſque fidelibus Domini Regis miniſtris, tam infra libertates quam extra, in eodem Com' ſalutem. Quia dat' eſt nobis intelligi per relationem & Teſtimonium multorum fide dignorum Com' prædict' quod A. B. de C. in Com' prædict' gener', & R. A. de eodem, Yeoman, * non ſunt bonor' nominis & famæ, nec converſationis honeſtæ, ſed malæ diſpoſitionis, barratores, & pacis dicti Domini Regis perturbatores, ita quod veriſimile ſit murdrum, homicidium, lites, diſcordias, & alia gravamina, & damna inter legios dicti Dom' Regis, de corporibus ſuis, prætextu præmiſſorum indies oriri: Ideo ex parte dicti Dom' Regis vobis & cuilibet veſtrum præcipimus, quod non omitt' propter aliquam libertatem in Com' prædict' quin attachiat' ſeu unus veſtrum attachiat præfatos A.B. & R.A. itaq' habeat' eos coram nobis ſeu aliis ſociorum noſtrorum Iuſticiar' dicti Domini Regis ad pacem, &c. quam citò capi poſſint (vel coram Iuſticiar' dicti Dom' Regis ad pacem in com' prædict' conſervand', ad proximam*

Cantabr.

**Sunt malæ famæ & mali geſtus, is ſufficient. lib. Inn. 385.*

generalem ſeſſionem pacis in eodem com' tenend') ad inveniend' tunc coram nobis (vel dict' Iuſticiarijs) ſufficient' ſecuritat' de ſe bene gerend' erga dict' Dom' Regem, & cunctum populum ſuum, juxta formam ſtatuti inde edit' & proviſ. ſub certa pœna eis per nos (vel per præfat' Iuſticiar') tunc imponend'. Et hoc nullatenus omittat is periculo incumbente. Et habeas coram nobis, vel dict' Iuſticiar' apud Seſſiones prædict' hoc Præceptum. Teſtibus nobis prædictis I.P. & I.C. ultimo die Junij, anno regni domini noſtri Caroli Dei grat' Angliæ, &c.

A generall Warrant for miſdemeanor.

Cantabr. IOhn Cutts Knight, one of the Juſtices, &c. to the Conſtables of, &c. and to either of them, Theſe are to will and require you, and in his Majeſties name ſtraitly to charge and command you, and either of you, that immediately upon the ſight hereof (or upon Munday next by eight of the clocke in the forenoone) you bring I.H. of your ſaid town, Butcher, before me, to anſwer to ſuch matters of miſdemeanor as on his Majeſties behalfe ſhall be objected againſt him. And hereof faile you not at your perils. Dated at Childerley, &c.

Another for miſdemeanor.

Cantabr. THeſe are to will and require you, &c. That immediately upon the ſight or receit hereof, you attach the bodies of A. B. and C.D. &c. (or of all and every the perſons hereunder named) & to bring them forthwith before me, to anſwer unto ſuch matters of miſdemeanor as on his Majeſties behalfe ſhall be objected againſt them. And hereof faile you not at your perils. Dated, &c.

To attach one for Felony.

Cantabr. FOraſmuch as complaint hath been made unto me by C.D. that of late he hath had certaine goods feloniouſly taken from him, and that hee hath in ſuſpition one R.G. of your ſaid Town: Theſe are therefore to will and require you, &c preſently upon the receit hereof, to attach the bodie of the ſaid R.G. and thereupon to bring him before mee to anſwer to the premiſſes. And hereof faile you not at your perils. Dated, &c.

Another.

Cantabr. THeſe are to will and require you, &c. preſently upon the receit hereof, to attach the bodie of A.B. and to bring him before mee, to anſwer unto ſuch matters of ſuſpition of felony as on his Majeſties behalfe ſhall be objected againſt him. And hereof faile you not at your perils. Dated, &c.

Another.

THeſe are to will and require you, &c. to attach, &c. to anſwer unto the felonious taking of certain goods, wherewith he is charged by I.S. And hereof faile you not, &c.

Another.

IOhan Millecent *Miles, unus Iuſt', &c. Conſt' vil' de B. & W. & cor' cuilibet veſtr' tam conjunctim & diviſ. ſalut'. Ex parte Dom' Reg. vobis & cuilibet veſtr' mando, quod attachiat is per corpus, ſeu unus veſtrum attachiat I. H.* de

de W. hoſteler ſuſpect' ſive defamat', de felon' ita qd' eum habeat' ſeu unus veſtr' coram me habeat die Lunæ prox. futuro, ſub periculo incumbente. Dat', &c.

Another.

RIchardus S^t-George *Miles, unus cuſt' pacis, &c. Ballivo Hundred' de R. in Com' præd' ſalutem. Ex parte dicti Domini Regis tibi mando qd' attach' N.B. de D. in com' præd' laborer, graviter ſuſpect' de felon' per ipſum fact' (ut dicitur) & eum proxim' gaole dicti Dom' Regis abſque aliqua manucapi' committas, ibid' morat' quouſque ſecundum legem Regni Angliæ deliberetur. Et hoc non omittas periculo incumbente. Datum, &c.*

To ſearch for ſtolne goods.

WHereas complaint hath beene made unto mee, by N.O. that of late hee hath had felonioufly taken from him certaine goods, and that hee hath in ſuſpition divers lewd and evill diſpoſed perſons within your Pariſh, theſe are to will, &c. that immediately upon the receit hereof you make diligent ſearch in all and every ſuch ſuſpected houſes, and places within your Pariſh, as you and this complainant ſhall thinke convenient; and if upon your ſaid ſearch you find any of the ſaid goods or other juſt cauſe of ſuſpition, that then you bring all ſuch ſuſpected perſons as you ſhall ſo find, before mee, to anſwer unto the premiſſes. And hereof faile you not, &c.

Another.

WHereas complaint hath beene made unto mee *Robert Hatton Cantab'* Knight, one of his Majeſties Juſt. &c. by I.S. of, &c. that upon Munday at night laſt he had felonioufly taken from him certaine goods, [they would be named] and that hee is given to underſtand, that there bee divers parcels of ſuch goods in the hands or houſes of certaine ſuſpected perſons within your Town, Theſe are to will, &c. that you be aiding to, and aſſiſt the ſaid I.S. (the bearer hereof) with your beſt endevours, whereby he may the better come to the ſight and view of the ſame goods, that ſo he may the better judge or know whether the ſaid goods, or any part of them, are his; and if hee ſhall finde the ſame goods, or any of them, that were ſtolne from him, or that hee ſhall challenge or claime any of the ſaid goods in the poſſeſſion of any of the ſaid ſuſpected perſons, that then you do preſently attach the bodies of all ſuch ſuſpected perſons within whoſe cuſtodie, houſe, or poſſeſſion, you or hee the ſaid I.S. ſhall ſo finde the ſame, and them (together with the ſaid goods) forthwith to bring before me, or ſome other of his Majeſties Juſtices of Peace for this Countie, to make anſwere thereto. And hereof faile you not, &c. Dated, &c.

To bind men to give in Evidence.

THeſe are in the Kings Majeſties name to charge and command you, *Cantabr.* &c. That preſently upon the ſight hereof, you, or ſome of you, doe cauſe to come before me (or ſome other of his Majeſties Juſt. of P. of this Countie) the perſons hereunder named, to the end that they and every of them may be bound to make their perſonall appearance at the next generall Gaole deliverie (or Quarter Seſſions) to be holden for this Countie, then and there to teſtifie their and everie of their knowledges, concerning certaine felonious acts committed by one A.B. now a priſoner in the Caſtle of C. &c. And hereof faile you not, &c.

A Warrant for a ſearch after a Robbery committed, *directed to the High Conſtables.*

WHereas there have beene many Robberies lately comm itted about,&c. Now for the better finding out of the ſame lewd perſons, wee whoſe names are hereunder written, being his Majeſties Iuſt.of Peace (for the Countie of Cambridge) have thought good, and doe hereby will and require you in his Majeſties name, That forthwith you direct your Precepts to every petie Conſtable within your (ſeverall)Hundreds (commanding them)to make ſearch in all Innes,Alehouſes,and other ſuſpected houſes within your Precincts, for all ſuch perſons as are maſterleſſe, or out of ſervice; as alſo for all idle,vagrant, or wandring Rogues, Beggers, or other perſons; and further, that they the ſaid petie Conſtables within their precincts, doe take examination and account of all thoſe, and ſuch other perſons,as be common Alehouſe-haunters, or which expend their mony in riot,or which doe not labour for their living, and have not whereon ſo to maintaine them: And that the ſames ſearches be holden all over in your Hundreds in one night,and at ſuch other ſeveral times as to your diſcretion ſhall ſeem meet:and if any ſuch perſons ſhalbe found in the ſame ſearches,and that upon your or the petie Conſtables examination taken of them,or any of them, there ſhall be found any cauſe of ſuſpition in them, or any of them, that then they bring the ſame perſons ſo ſuſpected before us,or ſome one of us, or ſome other of his Majeſties Iu.of the P.of this County,to be further examined in the ſaid cauſes, and to be further dealt withall according to law and juſtice.And for the better doing hereof,we require you to command in his Majeſties name,That everie petie Conſtable within their precinct doe require(and charge)two chiefe diſcreet Headboroughs in every Pariſh, to aſſiſt them the petie Conſtables in this ſervice. And hereof faile you not, &c.

A Huy and Cry after Robbers, &c.

To all Conſtables,and other his Majeſties Officers, as well within the Countie of Cambridge, as elſewhere within the Realme of *England.*

WHereas complaint hath bin made unto mee Vicechan. of the Vniverſitie of Cambridge, one of his Majeſties Juſt. of P within the ſaid Countie of Cambr. by I. S. of, &c. Husbandman,That upon Tueſday at night laſt (being the day of this inſtant November)he was robbed of certaine linnen taken out of his houſe,with ſome * other things, and that he hath manifeſt cauſe of ſuſpition of one A. B. a lewd Rogue, (here deſcribe his perſonage and apparell.) Theſe are in his Majeſties name to require you, and every of you, to make ſearch within your ſeverall Precincts for the ſaid A.B. and alſo to make huy and cry after him from Town to Town,and from County to County,and that as well by horſemen as footmen.And if you ſhall find him the ſaid A.B.that then you carry him before ſome one of his Majeſties Iuſt. of P. within the Countie where he ſhall be taken, by him to be dealt withall according to law, &c.

* They would bee named.

A

A Warrant for one who hath dangerouſly hurt another.

FOraſmuch as I am credibly informed that I.B. of your Towne, Blackſmith, hath now lately dangerouſly hurt one T.G of your ſaid Towne Husbandman, by a blow which hee hath given the ſaid T. on the face, and another on the backe, ſo as the ſaid T. is in danger of death thereby: Theſe are therefore in the Kings Majeſties name ſtraitly to charge & command you, that immediately upon the ſight hereof, you, or one of you, doe bring the ſaid I.B. before me, or ſome other of his Majeſties Juſtices of the Peace of this County, to find ſufficient ſureties, as well for his appearance before the Kings Majeſties Juſtices, at the next generall gaole delivery to be holden for this Countie, then and there to anſwer unto the premiſſes, and to doe and receiue therefore that which by the Court ſhalbe injoyned him: As alſo that he the ſaid I. B. ſhall in the mean time keep the Kings Majeſties peace towards his ſaid Majeſty, and all his liege people, & eſpecially towards the ſaid T.G. And hereof faile you not at your perils. Dated, &c. *Cantabr.*

For the reputed father of a Baſtard childe.

WHereas complaint hath beene made unto mee H. B. Serjant at Law, one of his Majeſties Juſt. &c. by K. I. of your ſaid Towne ſingle woman, that ſhe is (gotten) with childe by one T. S. alſo of your ſaid town Butcher: Theſe are therefore to will and require you, and in his Majeſties name to charge and command you, and either of you, that preſently upon the receit hereof, you attach the body of the ſaid T.S. and thereupon to bring him before me, (or ſome other of his Majeſties Juſt. of the P. for this County) to find ſufficient ſureties, as well for his appearance at the next generall Seſſions of the Peace to be holden for this County, as alſo for his good behaviour towards his Majeſtie, and all his liege people in the meane time. And hereof faile you not, as you will anſwer the contrary at your perils. Dated, &c. *Cantabr.*

An Order for a Baſtard childe.

The Order of Sir I.M. Knight, and M.D. Eſquire, two of his Majeſties Juſtices of Peace of the County of C. made for the reliefe of the Pariſh of W. in the ſaid County, for the keeping of B. a baſtard childe begotten by T.S. of, &c. on the body of K. I. &c.

Inprimis, upon the examination of the ſaid K. duely by us taken, we doe find that the ſaid T.S. is charged to have had (diuers times) bodily and carnall knowledge of her (betweene ſuch times) and to be the only father of the ſaid baſtard childe, &c. and therefore we doe order and adjudge him to be the reputed father of the ſaid childe.

We doe further order as followeth: Firſt, that the ſaid K. ſhall keep her ſaid childe untill it come to 8. yeares of age.

Secondly, that the ſaid T.S. upon notice of this our Order, ſhal, after ſuch notice, pay into the hands of one of the Overſeers of the poore of W. (for the time being) after the rate of 00 every week, to be paid monthly every year towards the reliefe of the ſaid child, untill it comes to 8. yeares of age.

Thirdly, that after the ſaid child ſhall come to 8. &c. that the ſaid T.S. pay to the Overſeers, &c. *5.li.* towards the putting out of the ſame childe to be an Apprentice, &c.

Fourthly,

Fourthly, that the ſaid T. S. preſently give good ſecuritie to one of the Overſeers, &c. to performe this our Order.

Where a Maid ſervant is gotten with child, and from thence ſent to her place of birth.

FOraſmuch as I. M. for the ſpace of yeares now laſt paſt, hath dwelt in the Pariſh of W. (in the Countie of E.) and being there ſetled in ſervice with of W. aforeſaid, was gotten with child; and being ſo with child, is now ſent or conveyed to our Town of B. under colour that ſhe was there born, to the burthening of your ſaid town, and contrarie to law: Theſe are in his Majeſties name to charge and command you ſafely to convey the ſaid I. to W. aforeſaid, there to bee ſet on worke, or otherwiſe to be provided for according to the law; and that you deliver and leave, or offer to leave the ſaid I. to and with ſome one of the Churchwardens or Overſeers for the poore of the Pariſh of W. aforeſaid. And hereof faile you not, &c.

Note that ſuch maid ſervant cannot be ſent from the place where ſhe is (or laſt was) in ſervice, to the place of her birth, but muſt ſet her ſelfe to labour where ſhe laſt dwelt, or ſerved, being able of body: or being impotent, ſhe is to be relieved by the Town where ſhe laſt dwelt, or ſerved. See *hic antea, tit. Poore.*

A Warrant for Overſeers to give up their Account.

To the High Conſtables of the Hundred of, &c.

Cantabr. THeſe are in the Kings Majeſties name to charge and command you forthwith to give warning to the Churchwardens, and other the Overſeers of the poore of every Pariſh within your Hundred, that they doe perſonally appeare before us at Newmarket, at the ſigne of the Greyhound there, upon Tueſday the of next comming, by nine of the clock in the forenoone of the ſame day, to yeeld up, and to make a true and perfect account in writing, ſubſcribed with their names or marks, of all ſuch ſums of mony as they have received, or rated and ceſſed and not received, for and towards the reliefe of the poore of their ſeverall Pariſhes, and alſo of ſuch ſtocke (to ſet their poore on worke) as is in their hands, or in the hands of any their ſaid poore to worke, and of all * other things concerning their ſaid office; and hereof that they faile not at their and everie of their perils. And further we require you, that you glue warning to the petie Conſtables of every Town within your ſaid hundred, that they or one of them be alſo then & there preſent before us, to informe and certifie us of the names of ſuch other perſons as are meet and fitting to be Overſeers of the poore within their ſeverall Townes, for this yeere next enſuing. And hereof faile you not, &c.

* See what they bee in the title Poore.

And this warrant muſt be under the hands and ſeales of two Juſtices at the leaſt, the one of the *Quorum. Vide tit. Poore.*

A Warrant to new Overſeers to take their charge.

BY vertue of the ſtatute made in the three and fortieth yeere of the Reigne of our late Soveraigne Lady Queene *Elizabeth*, (intituled, An Act

Act for the relieſe of the poore.) Theſe are to will and require you, whoſe names are here vnder written, that you, together with the Churchwardens of your Pariſh for the time being, doe (according to the ſame ſtat.) take order from time to time, for this yeare to come, for the ſetting to work of the Poore within your Pariſh, and for the raiſing of a convenient ſtocke of ſome Ware or Stuffe, in your town, to that purpoſe; and for the providing of neceſſary relieſe for ſuch as be lame and impotent amongſt you; and for the placing, as Apprentices, ſuch children whoſe parents are not able to maintaine them. And hereof ſee that you faile not at your perils. Dated under the hands and ſeales of us *Sam. Collins* and *Thomas Comber*, Doctors of Divinitie, and two of his Majeſties Juſtices of the Peace within the ſaid Countie of Cambridge.

This Warrant muſt be under the hands and ſeales of two Iuſtices. *Vide antea, tit. Poore.*

A Warrant to diſtraine ſuch as refuſe to pay their Rates for the Poore.

To the Churchwardens, and other the Overſeers for the Poore within the Pariſh of W. and to every of them.

FOraſmuch as we are credibly informed, that the perſons hereunder named, do refuſe to contribute or pay the ſummes of money hereunder mentioned, (upon their heads) being aſſeſſed and rated upon them ſeverally, for and towards the neceſſary relieſe of the poore of your ſaid Town, according to the forme of the ſtat. in that behalfe lately provided: Theſe are therfore in his Majeſties name to charge and command you, and every of you, forthwith to levie all and euerie the ſaid ſeverall ſummes of mony unpaid, and all the arrerages thereof, of all and every the ſaid perſons ſo refuſing, by diſtreſſe and ſale of the offenders goods, you rendring to the parties the overplus that ſhall remaine upon the ſale of the ſaid goods; And this ſhall be your ſufficient Warrant therein. Dated, &c. *Vide antea, tit. Poore.* *cantab.*

Another.

To the Churchwardens, &c

THeſe are in his Majeſties name to charge and command you and every of you, preſently to demand of al and every the perſons hereunder named, all and every the ſeverall ſummes of money hereunder ſeverally written, or ſet upon their heads, being aſſeſſed and rated upon them for and towards the neceſſarie relieſe of the poore of your ſaid town, according to the forme of the Statute in that behalfe lately provided: And if they or any of them ſhall refuſe to pay the ſaid ſeverall ſums of mony ſo rated upon them, That then preſently you levie the ſame by diſtreſſe and ſale of the offenders goods, rendring to the parties the overplus that ſhall remaine upon the ſale of their ſaid goods. And this ſhall be your ſufficient warrant therein. Dated, &c. *cantabr.*

Theſe two laſt Warrants muſt alſo be under the hands and ſeales of two Juſtices, &c.

A Warrant for a generall ſearch for Rogues.

To the High-conſtable of the Hundred of, &c.

Cantabr. THeſe are in the Kings Majeſties name to charge and command you, that you together with the petie Conſtables of the ſeverall townes, Pariſhes, and Hamlets within your Hundred, (taking ſufficient aſſiſtance out of the ſaid Townes) doe make a generall privie ſearch within every of the ſaid ſeverall Towns, Pariſhes and Hamlets upon at night next comming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle perſons, in & about your ſaid ſeverall Towns, Pariſhes, or Hamlets, and that ſuch as ſhall be found and apprehended, you doe cauſe them to be brought before us the next day unto I. by nine of the clock, there to be by us * dealt withall according to the late ſtatute in that behalfe provided. At which time and place we further require you, together with the ſaid petie Conſtables, to appeare before us, and there to give an account and reckoning upon oath, in writing, and under the hands of the Miniſter of every ſeverall Pariſh within your Hundred, what Rogues, Vagabonds, wandring and diſordered perſons have bin there apprehended as well in the ſame ſearch, as alſo ſince the laſt aſſembly and meeting that was made for this puroſe, being upon or about the day of laſt paſt. And hereof faile you not, &c.

* What the Iuſt ſhall do with them.

Note, that all Rogues which ſhall be brought before the Juſt. upon ſuch ſearch (after examination of their idle life, taken by the Juſt.) are either to be whipped by the Conſtables of the Towne, where the Juſt ſit (as it ſeemeth:) or elſe from thence are to be ſent to the houſe of correction, and to be conveyed thither by the Conſtables that brought them, and yet at the charge of the Hundred; which ſervices impoſed upon the Conſtables, are ſome cauſe of their neglect of this ſervice; and therefore I have ſet downe another courſe and preſident perhaps no leſſe ſerulceable, which alſo may be performed and done everie moneth, or everie meeting of the Juſt if need ſhall ſo require: or if the Juſt. cannot, or ſhall not meet, yet it ſeemeth ſuch Warrant may be granted out by any one Juſtice of Peace as followeth.

See the title of Rogues.

Cantabr. Theſe are in the Kings Majeſties name to charge and command you, that you, together with the petie Conſtables of the ſeverall Townes, Pariſhes, and Hamlets within your Hundred (taking ſufficient aſſiſtance out of the ſaid Townes) doe make a generall privie ſearch within everie of the ſaid ſeverall Townes, Pariſhes and Hamlets, upon at night next comming for the finding out, and apprehending of all Rogues, Vagabonds, and wandring and idle perſons, in or about your ſaid ſeverall Townes, and that ſuch as ſhall be found and apprehended, you do cauſe them to be puniſhed in every ſeverall Towne or Pariſh where they ſhall be ſo apprehended by the petie Conſtables of everie ſeverall Pariſh reſpectiuely, and by them alſo further to be conveyed according to the ſtatute. And if any of the ſaid Rogues ſhall appeare to be dangerous or incorrigible, that then you cauſe ſuch to be brought before me, or any other of his Majeſties Juſtices of Peace, of this Diviſion to be further dealt withall according to the ſtatute in ſuch cafes provided. Dated, &c.

Af-

Afterwards any one of theſe Juſtices may take the examination of, or proofe againſt ſuch dangerous rogue, and finding cauſe, may then joyn with any other Juſtice of peace of that limit, being of the *Quorum*, and commit ſuch rogue to the houſe of correction, or gaole, although the ſaid two Juſtices ſhall not meet together about it.

39 El. 3. Iac 7 R. Vag 4.

A Warrant for a fugitive ſervant.

HEnricus Smith *ſacræ theologiæ Doctor, unus Iuſt' Dom' Regis, &c.* Cantabr. *Ballivis Hundred' de B. & T H. Conſtab' de M. in com' præd' ſalut' Quia E. L. retentus in ſervic' I. T. de M. præd' ſibi ſerviend'* (ſecun- Weſt. 372. *dum formam & effect' ſtatuti de ſervientibus edit') a ſervitio præd' I. T. ſine cauſa rationabili, & licent' ipſius I. T. receſſit (ut dicitur.) Ideo ex parte dom' regis vobis & cuilibet veſtrum præcipio, qd' præf. E. L. ad præfat' I. T. magiſtrum ſuum de ſerviend' deliberar' faciat', Et ſi hoc recuſaver' tunc eum gaolæ Caſtri Cantabr' duci faciatis quouſque, &c. Ita quod eum habeat' coram me, & ſociis meis, Iuſtic' dicti domini Regis in Com' præd ad prox' ſeſſion' pacis ibid' tenend' ad faciend' & recipiend' ea quæ ei tunc & ibid' in hac parte objicientur. Sigill. meo ſigillato. Dat. apud.*

Another for the ſame, and to have the offender at the next Seſſions.

THomas Bambridge *ſacræ theologiæ Doctor, unus Iuſt, &c. vic' com'* Cantabr. Crom. 238. *præd, Necnon I. B. Conſtabular' ville de B. & R. N. ballivo itener' in eodem Com', & eorum cuilibet ſalut'. Ex parte dicti dom' Reg' vobis & cuilibet veſtr' mando, qd' attach' ſeu unus veſtr' attach' W. R. de B. præd' Laborer, ita qd' eum habeatis, ſeu unus veſtrum habeat, coram me & ſociis meis Iuſtic' dicti domini Regis ad pacem in Com' præd' conſervand', Necnon, &c. aſſign' ad proxim' generalem Seſſionem pacis in Com' præd' tenend', ad reſpondend' tam dicto dom' Regi, quam R. C. de, &c.* Yeomen, *quare in ſervitio ipſius R. apud T. in Com' præd' nuper retentus, ab eodem ſervitio ante finem termini inter eos concordat' ſine cauſa rationabili & licent' ipſius R. receſſit, in dicti domini Regis nunc contemptum, & ipſius R. grave dampn', & contra formam ſtatuti inde nuper edit' & proviſ. Et habeatis. ſeu unus veſtrum habeat, ibi tunc hoc præceptum. Teſte, &c.*

Another for a fugitive ſervant.

TO the Sheriffe of, &c. Whereas I. E. being lawfully retained in ſervice with N A. of, &c. is departed from his ſaid maſters ſervice before the end of his terme, without his maſters leave or licence, (or without any reaſonable cauſe) contrary to the lawes and ſtatutes of this Realme in that behalfe provided: Theſe are therefore in his Majeſties name to command you, and every of you, that you, or ſome one of you, do attach the body of the ſaid I. E. and to bring him before me (or ſome other of his Majeſties Juſtices of peace, &c.) to find ſufficient ſureties, well and faithfully to ſerve his ſaid maſter, according to the covenant betweene them

them made: and if he ſhall refuſe thus to doe, that then you cauſe him to be conveyed ſafely to the Kings Majeſties gaole, &c. (as before in a warrant for the peace.) Given under the hand of me *Thomas Wilſon* Doctor of Divinity, and one of his Majeſties Juſtices of peace within the ſaid County.

* Or thus: That the ſaid I. E to his ſaid Maſter to ſerve againe you doe cauſe to be delivered: and if that to doe he ſhall refuſe, that then you cauſe him to be conveyed to the Gaole, &c.

A warrant for one refuſing to ſerve.

Cantabr. MIchael Dalton *Armig unus magiſtr' Cur' Cancellar' & unus Iuſt'*, Cromp. 138. *&c. R. L. Ballivo de S. in Com' præd' ſalut'. Ex parte dicti Dom' reg' tibi mando quod attachias R. A. de S. præd'* Laborer, *Ita quod eum habeas coram me vel ſociis meis Iuſt. dicti Dom' Regis ad pacem in com' præd' conſervand'*, (*Necnon ad diverſa felonia, tranſgr' & alia malefacta in eodem com' audiend' & term' aſſig'*) *ad prox' general' ſeſſ. pacis in com' præd' tenend', ad reſpond' tam dicto dom' regi quam B. C. de A. &c.* Yeoman, *quare ipſe præd' R. A. licet in ſervitio congruo pro ſtatu ſuo per præf. B. C. fuit ſæpius requiſit' ei ſervire, ipſum tamen B. C. ſervire pœnitus recuſ. in contempt' dicti dom' regis & ipſius B. C. grave dampnum, & contra formam ſtatut. de ſervientibus nuper edit' & proviſi. Et habeas ibi tunc hoc mandat'. Teſte, &c.*

And yet ſee the ſtatute 5. *El. cap.* 4. whereby the departure of a ſervant, and refuſing to ſerve, &c. are referred to two Juſtices of peace, by them to be firſt examined, and then the offenders to be committed, if they be faulty therein. See *antea, tit. Labourers, and Warrants.*

For Alehouſe-keepers to Renew their recog.

IOhn St-George Eſquire, one of the Kings Majeſties Juſtices &c.

Theſe are in the Kings Majeſties name to require you, That you direct your precepts to everie petie Conſtable within your Hundred, requiring them that they warn all Alehouſe-keepers and Victuallers in their ſeveral towns within your ſaid hundred, to be, & perſonally to appear before us at Lynton, upon Thurſday, &c. then and thither bringing with them their former Licences: And further, that every of them bring with them a Certificate of their fitneſſe and honeſt behaviour in keeping of their Alehouſes and Victualling houſes, under the hands of foure at the leaſt, of the moſt ſubſtantiall, honeſt, and diſcreet inhabitants of the pariſhes where they ſo keepe or dwell. And hereof faile you not, &c.

A Warrant for the ſuppreſſing of an Alehouſe.

TO *Albot Pepis* and *Iſaac Barrow* Eſquires, two of the Kings Majeſties Juſtices of Peace within the ſaid Countie of Cambridge, to the Conſtables of B. and to either of them greeting. Whereas we are credibly informed that R. D. of your towne, victualler, is himſelfe a man of evill behaviour, and beſides, doth ſuffer evill rule and diſorder to be kept in his houſe, contrary to the Lawes and Statutes of this Realme: Theſe are therefore in his Majeſties name to will and command you forthwith to repaire to the houſe of the ſaid R. D. and to charge

charge him to ſurceaſe from keeping any longer any Alehouſe or tipling houſe, and from common ſelling of Ale or Beare, at his perill: and withall that you cauſe his ſigne to be pulled down: hereof faile you not, as you and either of you will anſwer to the contrary at your perill. Given under our hands and ſeales at B. the day of and in the yeare of our moſt gracious Soveraigne Lord *Charles*, &c.

A warrant to levie money forfeited by Alehouſe haunters.

Iohn Gill Eſquire, one of the Kings Majeſties Juſtices of the P. within the ſaid countie of Camb. to the Conſtables and Churchwardens of the Pariſh of W. and to every of them, greeting.

FOraſmuch as it it hath been duely proved before me, according to the ſtat. in that behalf provided, that all and every the perſons hereunder named, being inhabitants within your Pariſh of W. upon the 12. day of this inſtant moneth of November, have bin and continued drinking and tipling in the houſe of G. W. of your ſaid town (Inne-keeper, or Alehouſe-keeper) contrary to the forme of the ſame ſtatute: Theſe are therefore in his Majeſties name to charge and command you, and every of you, forthwith to levie by diſtreſſe and ſale of the goods of every the ſaid perſons hereunder named, the ſumme of three ſhillings & foure pence a peece, if they ſhall refuſe or neglect forthwith to pay the ſame; (which ſeverall forfeitures ſhalbe beſtowed and imployed by you to the uſe of the poore of your ſaid Pariſh) and that you render to every of the ſaid offenders the overplus that ſhall remaine upon your ſale of their ſaid goods: and if the ſaid offenders, or any of them, ſhall refuſe or neglect to pay their ſaid ſeverall forfeitures, and that you can find no ſufficient diſtreſſe whereon to levie the ſame, that then you the Conſtables, or one of you, ſhall commit every ſuch offender or offenders (refuſing or neglecting to pay the ſaid ſumme or forfeiture, and not having ſufficient whereon to be diſtrained for the ſame) to the ſtocks, there to remain by the ſpace of foure houres: and this ſhalbe your ſufficient warrant herein, Dated &c. *Cantabr.*

But before the Juſt. of P. ſhall grant theſe two laſt warrants, he ſhall do well firſt to ſend for the offenders, and to examine them of the offence, &c. See *hic cap.* 7.

A Warrant to convent all victuallers, &c. to put in ſureties for obſerving Fiſh-dayes according to Proclamation.

To the High-Conſtables of the Hundred of Radfield, and to either of them

THeſe are in the Kings Majeſtie name to command you to warne all the Inne-holders, Taverners, Cooks, Alehouſe-keepers, Butchers, and other Victuallers whatſoever within your Hundred, perſonally to appeare before us at *Lynton* upon Thurſday, being the twentieth day of this inſtant *Februarie*, at the ſigne of the Griffin there; and to bring with them ſureties that ſhall enter into bond with them, to his Majeſties uſe, for the due obſervation of the orders lately publiſhed for the reſtraint of killing, dreſſing, and eating of fleſh in Lent, or upon Fiſh-dayes, according to his Majeſties Proclamation in that behalfe, and that you, or one of you,

be then and there with us, to deliver us a note in writing of the names, ſirnames, and dwelling places of every of them, and of all other that victuall without Licence within your Hundred, as you will anſwer the contrary at your perills. Dated at Weſtwratting the firſt day of Februarie, &c.

Againſt Alehouſe-keepers.

ALſo a Warrant (like unto the laſt but one) may be made to levie the forfeiture of Inne-keepers, or Alehouſe-keepers, for ſuffering townſmene or others to continue drinking in their houſes, or for ſelling leſſe than one quart of their beſt Beere or Ale for 1. d. ſaving that the diſtreſſe taken of ſuch Inn keepers, and Alehouſe-keepers, is not to be ſold till after ſixe dayes, and then, for default of ſatisfaction, the ſame are preſently to be apprtiſed and ſold, and therefore ſuch warrant muſt therein be made accordingly. See 1. *Iac. cap.* 9. P. 7. 8.

To levie the forfeiture for not keeping the aſſiſe, &c.

THomas Tirrell Eſquire, one of the Kings Majeſties Juſtices, &c. Foraſmuch as it hath been duely proved before me (according to the ſtatute in ſuch caſe provided) that G. W. of your ſaid towne, Alehouſe-keeper, hath lately uttered or ſold (in his houſe) leſſe than one full Ale-quart of the beſt Beere for one pennie, contrary to the form of the ſame ſtatute: Theſe are therefore in his Majeſties name to charge and command you forthwith to levie, by diſtreſſe of the goods of the ſaid G. W. the ſum of xx. s. the ſame to bee beſtowed and imployed by you to the uſe of the poore of your Pariſh; and if the ſaid G. W. within ſix daies next after ſuch diſtreſſe by you taken, ſhall not pay the ſaid xx. s. that then you cauſe the ſaid diſtreſſe preſently to be priſed and ſold, and the over-plus that ſhall remaine upon your ſaid ſale of the ſaid goods, that you render the ſame over-plus to the ſaid G. W. and this ſhalbe your ſufficient warrant herein. Dated, &c.

Before the Juſtice ſhall grant out theſe two laſt warrants, hee ſhall doe well alſo firſt to heare and examine the offenders.

A warrant for the removing of a petie Conſtable, and for the ſwearing of another.

Cantabr. CAROLUS Dei gra', &c. vicecom' Cantabr', Necnon capitali Conſtabul' hundredi de R. & eorum cuilibet ſalut', Quia W. P. & R. S. ſubconſtab' villæ de C. & K. (certis de cauſis nos movent') ab officio ſuo amoveri & exonerari fecimus; Ideo vobis & cuilibet veſtrum conjunctim & diviſim præcipimus & mandamus, quod I. F. & R. M. ad omnia & ſingula eidem officio incumbentia bene & fideliter exercenda & exequenda (prout ipſi vobis inde reſpondere voluerint) jurare faciatis: dictiſq; W. P. & R. S. ſimiliter injungentes, quod ipſi de dicto offic' ulterius exercendo & exequendo nullatenus ſe intromittant, quouſq; aliud de nobis habuerint mandatum: Et quicquid inde feceritis, Juſticiariis noſtris ad pacem noſtram in dicto com' conſervand' aſſign' ad prox' general' ſeſſionem pacis apud C. in dicto com' tenend', certificetis, Hoc præceptum noſtrum tunc & ibidem remittentes. Teſte Roberto Lawrence *Armig' uno Juſtic' noſtrorum prædict' tali die, &c.*

You

Lamb. 33. You ſhall find this former preſident in M. *Lamb.* But upon ſuch warrant, *quere* who ſhall give the Oath to the new Conſtables, whether the High Sheriffe, or High Conſtable that ſhall execute ſuch warrant, or the Juſtice of peace that granted our ſuch warrant.

For this authoritie of removing pety Conſtables, and of chooſing and ſwearing new, is reputed properly to belong to the Leet, (it being one of the ancienteſt Courts in the Realme. *Br. Leet* 14.) and if the new elect be not preſent at the Leet to take his Oath accordingly, then upon certificate or notice thereof to any Juſtice of peace of that Countie, the Juſtice doth uſe to ſend his warrant for the party ſo choſen, and to give them their oath. *Vide hic cap.* 16.

Alſo in default of the Leet, or otherwiſe, where there ſhall be juſt cauſe to remove a pety Conſtable, for his inſufficiencie, or for any miſdemeanor, or other cauſe, every Juſtice of peace, *ex officio*, (as it ſeemeth) may remove the old Conſtables, and may chooſe and ſweare new: which alſo we ſee to be warranted by common experience. See *Lamb.* of the duties of Conſtables, *pag.* 19.

And I have ſeene ſome preſidents to ſuch purpoſe as followeth.

To our loving friend A.B. of W. Yeoman.

THeſe are in his Majeſties name to charge and command you, to make your repaire unto us, or to ſome other Juſt. of peace of this Countie, to take the Oath of a Conſtable to ſerve his Majeſtie within the Towne of W. (* according to the choice made of you by the Jury at the laſt Leet holden in your town.) And hereof faile you not. Dated under the hands of us *Iohn Layer* and *Martin Pierce* Eſquires, two of his Majeſties Juſtices of peace, &c. *Caution.*

* If they were not choſen at the Leet, this clauſe is to be left it.

The forme of the Oath concerning the office of a Conſtable.

YOu ſhall ſweare, that you ſhall well and truely ſerve our Soveraign Lord the King in the office of a Conſtable: you ſhall ſee and cauſe his Majeſties peace to be well and duly kept and preſerved according to your power: you ſhall arreſt all ſuch perſons as in your ſight and preſence ſhall ride or goe armed offenſively, or ſhall commit or make any riot, affray, or other breach of his Majeſties peace: you ſhall do your beſt indeavour (upon complaint to you made) to apprehend all Felons, Barretters, and Rioters, or perſons riotouſly aſſembled: And if any ſuch offender ſhall make reſiſtance, (with force) you ſhall levie Huy and Cry, and ſhall purſue them untill they be taken: you ſhall doe your beſt indeavour that the Watch in and about your towne be duely kept for the apprehending of Rogues, Vagabonds, Night-walkers, Eviſdroppers, Scouts, ſuch as goe armed, and the like, and that Huy and Cries be duly raiſed and purſued, according to the ſtatute of Winchester, againſt Murtherers, Theeves, and other Felons. And that the ſtatutes made for the puniſhment of Rogues and Vagabonds, and ſuch other idle perſons, comming within your bonds and limits, be duely put in execution: you ſhall have a watchfull eye to ſuch perſons as ſhall maintaine or keepe any common houſe or place where any unlawfull game is or ſhall be uſed; as alſo to

such as shall frequent or use such places, or shall use or exercise any unlawfull games there, or elsewhere, contrary to the statutes. At your Assises, Sessions of the peace, or Leet, you shall present all and every the offences done, contrary to the statutes made (1. *Iacobi*, 4. *Iacobi*, & 21. *Iacobi Regis*) to restraine the inordinate haunting and tippling in Innes, Alehouses, and other Victualling houses, and for repressing of drunkennesse: you shall there likewise true presentment make of all blood-sheddings, affrayes, out-cries, refcous, and other offences committed or done against the Kings Majesties peace, within your limits: you shall once every year, during your office, present at the quarter sessions all Popish Recusants within your Parish, and their children aboue 9 and their servants, (*sc.* their monethly absence from the Church:) 3. *Iac.* 4. and you shall have a care for the maintainance of Archerie according to the statute: you shall well and duely execute all precepts and warrants to you directed from the Justices of peace of this county: and you shall well and duely according to your knowledge, power, and abilitie, doe and execute all other things belonging to the office of a Constable, so long as you shal continue in this office, So help you God.

This Oath I have set down the more largely, thereby to shew the principall matters whereof the Constables are chiefly to have care.

The forme of a Supersedeas *by a Justice of Peace.* Cap. 122.

RIchard Love Doctor of Divinitie, and Vice-Chancellor of the Universitie of Cambridge, one of the Justices of Peace of our Soveraign Lord the Kings Majestie, within the county of Cambridge, to the Sheriffe, Baliffes, Constables, and other the faithfull Ministers of our Soveraigne Lord within the said Countie, and to every of them, sendeth greeting. Forasmuch as A. B. of, &c. Yeoman, hath personally come before me at &c. and hath found sufficient suretie (that is to say C. D. and E. F. &c. Yeomen), either of the which hath undertaken for the said A. B. under the paine of twenty pounds) and he the said A. B. hath undertaken for himselfe under the paine of fortie pounds, that he the said A. B. shall well and truely keepe the peace toward our Soveraigne Lord, and all his liege people, and especially towards G. H. of, &c. Yeoman, and also that he shall personally appeare before the Justices of the peace of our said Soveraigne Lord, at the next generall Sessions of the peace to be holden for this Countie of Cambridge: Therefore on the behalfe of our said Soveraigne Lord, I command you, and every of you, that you utterly forbeare and forbease to arrest, take, imprison, or otherwise by any meanes (for the said occasion) to molest the said A. B. And if you have (for the said occasion, and none other) taken or imprisoned him, that then you doe cause him to be delivered, and set at liberie without further delay. Yeoven at Cambridge aforesaid, under my seale this last day of Julie, &c.

* The Supersedeas is good though it name neither the sureties nor the summe.

Alias

Alias.

THomas Comber *ſacræ theologiæ doctor, & c. unus Iuſtic' domini Regis & c. omnibus Ballivis & miniſtris domini Regis infra Com' præd' & eorum cuilibet ſalutem. Quia A. B. & C. D. coram me perſonaliter conſtitut' manuceper' pro I S. ſub pœna xl. li. quas conceſſer' & uterque eorum per ſe pro toto & in ſolid' conceſſit ad opus dicti Domini Regis, levari, ſi dampnum vel malum aliquod W. T. eveniat de corpore ſuo, & c. per dictum I. S. vel per procur' ſuum quoviſmodo, vobis & cuilibet veſtrum ex parte Domini Regis mando, quod captione corporis ejuſdem I. S. quocunque modo cenſeatur prætextu alicujus præcepti ſine Warr' vobis ſeu alicui veſtrum in hac parte direct' ſeu dirigend' ſuperſedeatis & ſine dilatione deliberari fac'. Datum, & c.*

Alias.

HEnricus Bing *Serviens ad Legem, unus Iuſtic' domini Regis, & c. vic' ac omnibus & ſingulis ballivis, miniſtris & fidelibus dicti domini Regis in eodem Com' & eorum cuilibet ſalutem, quia I. S. ſuffic' ſecur. de pace (& de bono geſtu ſuo) erga dictum dom' Regem, & præcipue erga W. T. coram me invenit, Ideo ex parte dicti domini Regis vobis & cuilibet veſtrum mando & præcipio firmiter injungens quod de ipſo I. S. pro hujuſmodi ſecur' pacis inveniend' cap': ſive arreſtand' omnino ſuperſed'. Et ſi ipſum I. S. ea occaſione ceperitis ſive impriſonaver' tunc eum deliberari fac' ſi ipſum ea occaſione & non alia detineatur. Teſte, & c.*

If the priſoner be in the gaole, ſee another forme *hic poſtea, tit. Liberate.*

Note that ſuch *Superſedeas* is good, though it name neither the ſureties, nor the ſummes wherein they are bound; but yet it is the better form to expreſſe them both, for then if it ſhall appeare that the ſureties are not ſufficient men, or not bound in ſufficient ſummes, better ſureties may be taken: And accordingly all the *Superſedeas* iſſuing out of the Chancery, Kings Bench, and Court of Common Pleas, doe reherſe the names of the ſureties, and the ſummes; and thoſe things which the higher Court doe uſe, are the Rules and orders for others to follow; &c. 2. *H.* 7. *fol.* 1. *Fitz. Superſed.* 4.

The forme of a *Superſedeas* (by a Iuſtice of peace) upon a Writ of *Supplicavit* againſt an Infant.

SAmuel Collins *ſacræ theologiæ doctor, unus Iuſtic' domini Regis nunc ad pacem in com. præd. conſervand. aſſignat', vicecom. ejuſdem com', ac ominibus & ſingul' ballivis, conſtabular', cæteriſq; dicti dom. Regis miniſtris, tam infra libertates, quam extra in com. præd ſalutem: Sciatis quod breve dicti domini Regis recepi in hæc verba, Carolus, & c.* (reciting here all the Writ *verbatim*) *Et quia I. B. de, & c. I. S. de, & c. Et preſat' C. A. coram me præf.* Samuele Collins, *perſonaliter comparuer' & prædict. I. B. & I. S. manuceper' pro dicto C. A. qui infra ætatem 21. annor. exiſtit': viz. quilibet manucaptor. præd. in 20. li. quas recognover. ſe debere dict. domino Regi, ac conceſſ. de terris & tenementis, bonis & catallis ſuis, ad opus dicti domini regis levand' viz. qd' præd' C. A. dampnum vel malum aliq. alicui de populo dict. dom. regis de corpore ſuo, vel de incendio domorum ſuarum non faciet nec fieri procurabit quoviſmodo: Ideo ex parte dicti domini Regis vobis & cuilibet* Cantabr'

cuilibet veſtrum mando, qd' de coarctand' aut attachiand' dictum C. A. ad inveniendam aliquam ſecuritatem pacis per ipſum gerend' erga dictum dom' Reg' & cunctum popul. ſuum, ſeu alicui de eodem populo ſuo coram vobis, ſeu aliquo veſtr inveniend' ſuperſed' ſeu ſuperſed' fac' omnino. Et ſi ipſum C. A. occaſione præd' & non alia reperitis, ſeu capi mandaver', & in priſona ipſius dom' Regis, ſub cuſtodia veſtra detineritis, tunc ipſum a perſona in qua detinetur ſine dilatione deliber' fac' ſeu unus veſtr' deliberari fac'. Teſte me præfat' Sam. Collins, 22. die Nov. anno regni dict' dom' Reg' &c.

Alias.

HEnricus Smith *ſacræ theologiæ doctor, &c. unus Iuſt' domini Reg' &c. Vic' Com' præd'. Necnon omnibus conſtabulariis, ball', ac aliis miniſtris dicti dom' Regis, & eorum cuilibet, ſalutem. Sciatis quod mandat' (aut Breve) dom' Regis in hec verba recepi. Carolus Dei grat' &c.* (reciting all the Writ) *Et quia I.B. de, &c. & I.S. de, &c. Et præd' T.C. coram me præf. H. S. perſonaliter com' & præd' I.B. & I.S. pro præd' T.C. manuceper' quilibet manucapt' præd' ſub pœna xx li. & præd' T.C. pro ſeipſo aſſumpſit ſub pœna xl. li. de terris & catallis ſuis ad opus dict' reg' levand' Ideo, &c. Quod præd' T.C. dampnum vel malum, &c. ut ſup.*

A Superſedeas for the good behaviour.

NOte that upon good ſureties taken, (for the good behaviour) a *Superſedeas* of the good behaviour may be granted, as for the P. *mutatis mutandis.* Crom. 237.

Note alſo, that a *Superſedeas de Capias indictatum de tranſgreſſion.* and ſo of an *Exigent*, may be granted by the Juſt. of P. out of Seſſions: For otherwiſe it were miſchievous for the party, as well by reaſon of his impriſonment, as alſo for that he may be outlawed before the Seſſions, if the Juſt. of P. might not take ſureties of him for his appearance; and all is but to appeare to anſwer to the indictment.

And M. *Crompton* is of opinion, that theſe may be granted by any one Juſt. of P. with whom agreeth *the book of Entries*. But M. *Lambert* thinketh it not in the lawfull power of any one Juſt. of P. to grant ſuch *Superſedeas*, at this day, but that it muſt be done by two Ju. at the leaſt, and the one being of the *Quorum*: nevertheleſſe, for that I find the old Preſidents to run in the name of one Juſtice of peace alone, I have drawne theſe accordingly; perſwading notwithſtanding the joyning of two Juſtices herein, and the one of the *Quorum*, if they may conveniently. Crom. 234. Li. Intr. 501. Lamb. 501, & 773.

A Superſedeas de Capias indictatum de tranſgreſs.

Cantabr. THomas Brambridge *ſacræ theologiæ doctor, unus Iuſt' dom' Reg' nunc ad pac' in com' præd' conſervand. Necnon ad diverſ. felon', tranſ. &c. in eod' com' audien' & termin' aſſig. vic' com præd' ſalut'. Quia C. D. de A. in com' tuo, Yeoman, venit coram me, & inven' ſuffic' manucaptores eſſendi coram Iuſt' dict' dom' Regis ad pacem' in com' præd' conſervand' (Necnon ad diverſa felon' &c. in dict' com' audiend' & terminand' aſſig') ad generalem ſeſſion' pacis apud C. in com' præd' prox. die tenend', ad reſpond' dict' dom' reg' de quibuſdam tranſgr' contemp' & offencis, unde indict' exiſtit: Ideo ex parte dicti*

dicti dom' regis, tibi præcipio qd' de capiend præf. C. D. ſeu ipſum impriſon' aut eum, ea ex cauſa aliqualit' m leſt' omnino ſuperſed' & ſi eum, ea ex cauſa, & non alia ceperitis, tunc ipſum ſine dilatione deliber' faciat'. Teſte me, &c.

Alias quia invenit plegios pro fine.

Crom. 234. THomas Wilſon *ſacræ theologiæ doctor, unus Iuſt' dict' dom' Reg' ad* Cantabr.
pacem in com. præd' conſervand', Necnon ad diverſ. fel' tranſ. & alia malefacta in eod' com' audiend' & terminand' aſſign' vic' com' præd' ac omnibus & ſingulis ballivis, conſtabul', cæteriſq; dicti dom' regis miniſtris, tam infra libertates quam extra in com' præd' ſalutem: Licet nuper Breve (vel præceptum) dicti domini Regis vobis ſeu vni veſtrum præceptum fuit qd' caperetis ſeu unus veſtrum caperet A. B. de S. in comitat' præd' Yeoman, ſi inventus fuerit in eodem, & ad ipſum ſalvo cuſtod', Ita quod haberetis ſeu unus veſtrum haberet corpus ejus coram cuſtodibus pacis, ac Iuſticiar' dicti domini Regis ad pacem in com' præd' (Necnon ad diverſa felonias, tranſgreſ. & alia malefacta in eodem comitat' audiend' & terminand' aſſignat') apud Cantabr' tali die ad reſpondend' dicto dom' Regi de contempt', & tranſgreſ. unde coram dictis Iuſt' indictatus exiſtit: quia modo prædictus A. B. venit coram me, & inven' ſufficient' plegios pro fine ſuo cum dict' dom' Rege pro præmiſ. faciend' Ideo ex parte dicti dom' Regis vobis conjunctim & diviſ. mando quod ad executionem Brevis prædict' ulterius fac' ſuperſed' omnino. Et ſi ipſum A. B. ea occaſione & non alia ceperitis, & in priſona dict' dom' Regis detineritis, tunc ipſum ſine dilatione ab eadem deliber' faciat' ſeu unus veſtrum delib' faciat' & habeatis, ſeu unus veſtrum habeat hoc præceptum ad Seſſiones præd. Dat' die Auguſti, anno regni, &c.

Superſedeas de capias pro fine.

Crom. 234. IOhannes St-George *Armiger' unus Iuſtic' dom' Regis nunc ad pacem in* Cantabr.
com' præd' conſervand' aſſign' Vic' Com' præd' ſalutem. Quia C. D. de A. in dict' com' Yeoman, venit coram me, & inven' ſufficient' mainucapt' eſſendi ad proximam generalem Seſ. pacis in comitat' præd' tenend' ad faciend' ſuum cum dicto dom' rege pro quibuſdam tranſgr' contempt' & offencis, unde indictatus exiſtit, Ideo tibi præcipio, quod de capiend' præf. C. D. impriſonand' ſeu ipſum ea occaſione aliqualit' moleſtand' omnino ſuperſed' & habeas ibi tunc hoc præceptum, Teſte me, &c.

Superſedeas de Capias indictat' de felonia.

Crom. 234. TAlbot pepis *Armig', unus Iuſticiar' domini regis nunc ad pacem in* Cantabr.
Com' præd. conſervand' aſſignat. vic' comit. præd. Necnon omnibus & ſingulis ballivis, conſtabul. cæteriſque dicti domini Regis miniſtris tam infra libertates quam extra in dict. com. ſalut. Quia A. B. de C. in com. prædict. Husbandman, venit coram me, & inven' ſufficient. ſecur. eſſendi coram Iuſtic' dicti dom' regis ad pacem in com' præd' conſerv' (Necnon ad diverſa felonias, tranſgr. & alia malefacta in eodem Com' audiend' & terminan' aſſi') ad prox. general. Seſs. pacis in com. præd' tenend. ad reſpond' dict' dom' Regi, de diverſ. felon' & tranſg. unde coram eis indict' exiſtit, Ideo ex parte dicti dom' reg' vobis & cuilibet veſtrum mando, quod, de capiend' præd' A. B. ea ex cauſa ſuperſ. omnino, & ſi eum ea occaſione & non alia ceperitis ſeu impriſ. tunc ipſum ſine dilatione deliber. faciat. Dat. &c.

Super-

Superſedeas de exegi fac' de felonia.

Cantabr. CArolus, *&c. vic' com' Cantabr' ſalutem. Quia C. D. de A. in com' tuo* Yeoman, *venit coram E. F. &c. & invenit ſufficien' manucaption. eſſendi coram cuſtod' pacis noſtræ (ac Iuſt' noſtris ad diverſas felonias, &c.) ad generalem ſeſſion' pacis noſtræ apud C. tali die tenend' ad reſpondend' nobis de quibuſdam felonijs unde indictatus eſt. Ideo tibi præcipimus quod de ulterius exigend' prefat' C. D. ad aliquod comitat' tuum, vel impriſonand', ſive ipſum ea occaſione aliqualiter moleſtand' omnino ſuperſed' & habeas ibi tunc hoc breve. Teſte* Willielmo Marche *apud H, tali die & anno.*

Superſed' ad deliberand' priſonar' capt' pro tranſgreſſ. vel ſimil'.

M. *Dar. unus Iuſtic' &c. Conſtabul' ville de B. Necnon cuſtodi Gaole dicti domini Regis in Com' præd' ſalutem. Quia W. C. de B.* Laborer *venit coram me, & invenit ſuffic' ſecuritat' eſſendi coram Iuſt' dicti Domini Regis ad proxim' generalem ſeſſion. pacis in com' præd' tenend' ad reſpond' tam domino Regi quam B. C. de quibuſd' trangreſſ. ſeu contemptibus, &c. per ipſum perpetratis. Ideo vobis & cuilibet veſtrum mando, qd' prædict' W. C. a cuſtodia veſtra ſine dilatione deliberari faciatis, & alio mandato meo inde direct' interim ſuperſedeat': Et hoc mandatum meum erit vobis & cuilibet veſtrum Warrant'. Datum apud Weſtwratting tali die, &c.*

Recogniſances. CAP. 123.

A ſingle Recogniſance taken before Juſtices of Peace.

Cantabr. MEmorand' *quod die anno Regni domini noſtri Caroli Dei gratia Angliæ, Scotiæ, Fran' & Hib' Regis, fidei defenſoris, &c. venerunt coram* Mi. Dalton, & Iſaac Barrow *armiger' Iuſticiar' dicti domini Regis ad pacem in Com' C. conſervand' aſſignat' I. S. de E. in comitatu prædicto* Yeoman, *& W. S. de eadem* Weaver, *ac R. D. de S. in comitat' prædict'* Taylor, *& recognover' ſe debere dicto domino Regi, viz. quilibet manucapt' præd' quinque libr', & prædict' I. S. decem libr' bonæ & legalis monetæ Angliæ, (ſolvend' eidem dom' Regi in feſto Purificationis beatæ Mariæ virginis proxim' futur' poſt dat' præſent.) Et niſi fecerint, conceſſerunt pro ſe, hæred' executor' & adminiſt' ſuis per præſentes quod dictæ ſeperales ſummæ levent' & recuperunt' de maneriis, meſſuagiis, terr', tenement', bonis, catallis, & hæreditament' ipſor' I. S. W. S. & R. D. hæred' executor', & aſſign' ſuor' ubicunq; fuerint invent. Dat' &c.*

Another ſingle Recogniſance.

Cantabr. MEmorand' *qd' die anno regni domini noſtri Caroli Dei grat', &c. D. E. de Balſham in com' præd'* Yeoman, *perſonalit' venit coram me* Mi. Dalton *armig' uno Iuſt' dicti dom. regis ad pacem in com' prædict' conſervand' aſſign' & recogn' ſe debere dicto dom' regi 10li. bonæ & legal' monetæ Angl' (de bonis & catallis, ter' & tenemen'*

ſuis

suis fieri & levari, ad opus dicti dom' regis hered' & successorum suorum) si defecerit in conditione indorsata.

Aliàs.

MEmorand' *qd' die anno regni, &c. ven' coram me M.D. Cantabr. uno Iust' &c. assig. T. H. de Westwrate in com' pred'* Yeoman, *& I.S. de eisdem vill' & com'* Husbandman, *& manuceper', & uterque eor' separatim manucepit sub pœna 5. li. legalis monetæ Angliæ, pro W. St. de W. pred'* Tailor, * *Et pred' W. St. assump. pro seipso sub pœna* 10. *l. consimilis monetæ Angl' quas quidem separales summas recognover' & quilibet eorum ut predicitur recognovit se debere dicto dom' regi de terris & tenem' bonis & catallis suis fieri, &c. Si pred' W. St. defecerit in perform' condit' introscript.*

If the partie to be bound be within age, then shall he be bound by sureties onely, (but he himselfe shall not be bound) and then shall the Recognisance be *ut supra*, to this marke (*) and then as followeth: *Qui infra ætatem xxi. annorum existit, Quas quidem separales summas recognover' & uterque eorum ut predicitur recognovit se debere, &c. ut supra.*

A Recognisance for Peace.

MEmorand' *qd' die anno regno dom' nostri Caroli Dei gra', &c. R.P. de E in com' pred'* Yeoman, *in propria person' sua venit coram me* Tho. Tirrel *armig' uno Iust' dicti dom' Reg' ad pacem in dicto com' conservand' assign' & assumsit pro seipso sub pœna* 20. *li. & H.I. de L. in com' pred'* Yeoman, *& M. N. de, &c. & P. Q. de &c.* Husbandman, *tunc & ibid' in propriis personis suis similiter ven', & manuceperunt pro pred' R. P. viz. quilibet eor' separat' sub pœna* 100. *s. qd' idem R.P. personaliter comparabit coram Iust' dicti dom' reg' ad pacem, ad prox. generales sessionem pacis in com' pred' tenend' & faciend' & recipiend' qd' ei per curiam tunc & ibid' injungetur: Et qd' ipse interim pacem dicti dom' regis custodiet erga ipsum dom' reg' & cunctos populos suum, & præcipue versus M. N. de pred'* Yeoman, *& qd' dampnum vel malum aliq' corporale aut gravamen pref. M.N. aut alicui de populo dicti dom' regis, quod in lesionem aut perturbationem pacis ipsius domini Regis, seu pref. M. cedere valeat quovismodo, non faciet, nec fieri procurabit. Quam quidem sum' viginti lib' pred' R.P. & quilibet manucept' pred' predictas separales summas cent. solid' recognover' se debere dicto dom' regi de terris & tenementis, bonis & catallis suis quorumlibet & cujuslibet eor', ad opus dicti dom' regis hered' & succes-* Lamb. 433. *sor' suor' fier' & levari (ad quorumcunque manus devenerit) si contigerit ipsum R.P. premissa, vel in eorum aliquod in aliquo infringere, & inde legitimo modo convinci. In cujus rei testimon' ego predictus* Tho. Tirrel *sigillum meum apposui. dat' apud, &c.*

And if the Justice shall onely subscribe his name to the Recogn. without his seale, it is well enough; and so is the usuall course and form with us, and that in either of these sorts; *sc. Recognit' coram me R. Th.* or onely to subscribe the Justices name thus, R. Th.

Or thus for the Peace.

Lamb. 109. MEmorandum, *quod die, &c. A.B. de &c. & C.D. de* Cantabr. *eadem*, Yeoman, *venerunt coram me* Johanne Layer *armiger' uno Iusticiar'*

ſticiar' &c. & manuceperunt pro I. S. nuper de L. &c. quod ipſe perſonaliter comparabit coram me præfato Johanne Layer *& ſociis meis Iuſticiar' pacis domini regis ad proximam generalem ſeſſion', &c. & quod ipſe interim geret pacem erga cunctum populum Domini Regis, & precipue erga R.B. &c. viz. quilibet manucaptorum prædictorum ſub pœna viginti librar'. Et prædictus I.S. aſſumpſit ut ſupra pro ſeipſo ſub pœna quadragint' librar'. Quam quidem ſummam quadragint' libr' præd' I.S. & quilibet manucaptorum præd' dict' ſummam viginti librar' recognoverunt, &c. ut ſupra.*

And this may be well done alſo by a ſingle Recog. in Latin, *ut ſupra*, with a Condition added, or endorſed in Engliſh, for the keeping of the peace, and for the day and place of the parties appearance at the quarter Seſſions, as followeth.

A Condition to keep the Peace.

THe Condition of this Recogniſance is ſuch, that if the within bounden I.S. ſhall perſonally appeare before the Juſtices of our ſaid Soveraigne Lord the King, at the next generall Seſſions of the Peace to be holden in the ſaid Countie of Cambridge, to doe and receive that which by the Court ſhall be then and there injoyned him: And that he in the mean time doe keep the peace of our ſaid Soveraigne Lord the King, towards the Kings Majeſtie and all his liege people, and eſpecially towards, A.B. of C. aforeſaid, Yeoman. That then. &c.

A Recogniſance for the good behaviour.

MEmorand' *qd' die menſis anno Regni Caroli, &c. R. G. de, &c. & H.C. & I.S. de ead', &c. in propriis perſonis ſuis venerunt coram nobis* Iſaac Baro, & Roberto Hagar *Armiger', Iuſt' dicti dom' Regis, &c. Et prædicti H.C. & I.S. manuceperunt pro præfat' R. G. & idem R.G. ad tunc aſſumpſit pro ſeipſo, qd' idem R.G. perſonaliter comparabit coram Iuſt' dicti domini Regis ad pacem, &c. ad proximam generalem Seſſionem,* * *&c. Et quod ipſe interim ſe bona geret erga dominum Regem & cunctum populum ſuum, & præcipue erga I.B. de C. &c. ſc. qd' ipſe non inferet, nec inferri procurabit, per ſe, nec per alios, damnum aliquod ſeu gravem præfato I.B. ſeu alicui de populo ipſius Dom' Regis de corporibus ſuis, per inſidias, inſultus, ſeu aliquo alio modo, quod in leſionem ſuu perturbationem pacis dicti Domini Regis cedere valeat quoviſmodo, viz. uterque præd' H.C. & I.S. ſub pœna cent' libr', & præd' R.G. ſub pœna ducent' libr': Quas quidem ſeparales ſummas cent' libr' uterque prædictor' H.C. & I.S. (ut prædicitur) per ſe, ac prædictus R.G. prædict' ſummam ducent' librar' recognoverunt ſe debere dicto Dom' regi de terris & tenem' bonis & catallis ſuis & quorumlibet, ac cujuſlibet eorum, ad opus ipſius dicti dom' Regis fieri & levari ſi contingat præf. R.G. in aliquo præmiſſor' deficere, & inde legitimo modo convinct. Dat' &c.*

See the Recog. for the Peace.

Lamb. Lib. Int.

Lib. Int. 461

Or thus, for the good behaviour.

cantabr. MEmorand', *quod die menſis anno regni Caroli, &c. N. G. de &c. in propria perſona ſua venit coram nobis* Iſaac

Iſaac Baro, & Roberto Haggar, *Armigeris, Iuſt' dicti domini Regis ad pacem in dicto Com' conſervand' aſſig' : Et aſſumpſit pro ſeipſo ſub pœna 200. li. Et H. C. & I. S. de eiſdem villa & Com'* Husbandman, *tunc & ibidem in propriis perſonis ſuis ſimiliter venerunt, & manuceperunt pro præfato N. G. viz. uterque eorum ſeparatim ſub pœna centum lib'. Quod idem N. G. perſonaliter comparabit coram Iuſt' dicti dom' Regis ad pacem, &c. ad proxim' generalem Seſſionem pacis in Com. præd' tenend' ad faciend' & recipiend' qd' ei per Cur' tunc & ibidem injungetur. Et quodipſe interim ſe bene geret erga dom' Reg' & cunctum populum ſuum, & præcipue erga I.B. de C. &c. ſc. qd' ipſe non inferet, nec inferri procurabit, per ſe nec per alios : dampnum aliquod ſeu gravamen præfato I. B. ſeu alicui de populo ipſius dom' regis de corporibus ſuis, per inſidias inſultus, ſeu aliquo alio modo quod in læſionem ſeu perturbat' pacis dicti dom' regis cedere valeat quoviſmodo. Quas quidem ſeparales ſummas, &c. ut ſupra.*

Or by a Recogniſance, with this Condition ſubſcribed or indorſed.

THe condition of this Recogniſance is ſuch, That if the above bounden R. G. ſhall perſonally appeare before the Juſtices of our Soverai;ne Lord the King, at the next generall Seſſions of the peace, to be holden iu the Countie of C. to doe and receiue that which by the Court ſhalbe then and there injoyned him : and that in the meantime he be of good behaviour (and doe keepe the peace of our ſaid Soveraigne Lord the King) towards his Majeſtie, & all his liege people, That then, &c.

Or thus.

Conditio Recognitionis præd' talis eſt, Quod ſi prædict' N. G. impoſter' ſe bene geret, (& pacem dom' regis conſervabit) erga dict' dom' Reg' & cunctum populum ſuum, qd' tunc recognitio præd' pro nullo teneat', alioquin in ſuo robore permanere.

Or thus.

Lamb. 125. Lib. Intr. 454

Conditio Recognit' prdict' talis eſt, Quod ſi prædictus R. G. impoſterum ſe bene geret, & pacem dom' regis conſervabit, erga dictum dom' Reg', & cunctum populum ſuum, & præcipue erga I. B. de, &c. & nullum dampnum corporale, nec aliquid qd' in leſionem pacis dom' Regis cedere valeat præfato I. B. ſeu alicui de populo ipſius Domini Regis faceret quoquo modo extunc recognitio prædicta pronullo teneatur, alioquin in ſuo robore permaneat.

34. H. 8 c. 39. Note, that all Bonds, Obligations, and Recogniſances that ſhall bee taken by any Juſtice of Peace (or other perſon) for any cauſe touching the King, muſt be made and taken in the Kings name, and by theſe words, *Domino Regi, &c.* See hereof *antea, tit. Suretie for the Peace, and Recogniſances.*

Alſo note that the Recogniſ. runneth, *De terris & tenementis, bonis & catallis, &c. fieri & levari, &c.* And yet the King may be at his election, to take execution of the body of the Recognizors, (as well of the principall, as of the ſureties) or of their lands and chattels, (for the ſumme

in

in the Recognisance contained) *per Curiam 7. Hen. 4. 34. a. Vide antea, tit. Suretie for the Peace.*

And (it seemeth) by the Common Law, before the statute of 33. *H.* 8. 39 that in all cases where a man is a debtor to the King, as well his body as his lands and goods, are liable to the Kings Execution: For *Thesaurus Regis est pacis vinculum, & Bellorum nervi.* And therefore the Law doth give to the King full remedie for it. See *Coke* 3. 12. *b.* & *Coke* 11. 93 *a.*

A Recognisance to give in Evidence against a Prisoner.

Cantabr. MEmorandum, *quod die anno regni Domini nostri Caroli, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ regis, fidei Defens. decimo, &c. R. T. de C. in Com' prædict'* Yeoman, *venit coram me Ro. Th. Armig' uno Justic' dict' Dom' Reg' ad pacem in Com' prædict' conservand' assignat', & cognovit se debere dicto Domino Regi quinque libr' legalis monetæ Angliæ, sub conditione quod si ipse personaliter comparabit coram Just' dicti Dom' Regis ad proximum generalem goalam delib' in Com' prædict' tenend' ad tunc & ibid' ostendendum in evidenc' secundum formam Stat. vers. D. F. nuper de W. in Com' prædict', qui modo attach' & suspect' felonie Gaole dicti Dom' Regis Crem' prædict' commissus existit, quod tunc, &c. Alioquin, &c.*

Or this may be done by a single Recognisance, with a Condition endorsed, as followeth.

A Condition to preferre a Bill of indictment, and to give in evidence against a Prisoner.

THe condition of this Recog. is such, that whereas one *A. B.* of *C.* Laborer, was this present day brought before the said Just. by the within bound *D. E.* and was by him charged with the felonious taking of xx. sheep, of the goods of him the said *D.* and thereupon was sent by the said Just. to the Kings Majesties gaole: If therefore he the said *D. E.* shall and do at the next generall gaole deliverie (to be holden in the said County) preferre or cause to be framed and preferred one Bill of Inditement of the said felony against the said *A. B.* and shall then also give evidence there concerning the same, as well to the Jurors that shall then enquire of the said felony, as also to them that shall passe upon the triall of the said *A. B.* that then, &c. or else to stand in full force for the King.

Or thus, to give in evidence.

THe condition, &c. that if the above bounden *D. E.* doe at the next generall Sessions, pursue and give such evidence as hee knoweth against *A. B.* now prisoner in the Castle of *C.* concerning certaine felonious acts by him committed: then, &c.

A

A Condition to appeare before the Iuſtices of Peace at their next Seſſions.

Conditio iſtius Obligationis talis eſt, quod ſi A.W. de, &c. ſpinſter, in propria perſona ſua comparuit coram Iuſtic' Domini Regis de pace in Com' Cicon ſeruand. aſſign. (nuncupat &c.) ad prox' Seſſiones pacis dict' domini Regis in tent' prox' tenend. ad reſpondend' eam dicto domino regi, quam Gulielmo placito tranſgreſſionis & contemptus contra formam ſtatuti ſeruient', Quod tunc preſens Obligatio vacua, & pro nullo habeat' & ſi prædict' A. contra premiſſa ſeu eorum aliquod in futuro fecerit, quod tunc preſens Obligatio in omni ſua robore ſtet & effectu, &c.

Or thus.

THe Condition of this Recognisance is ſuch, That if the within bounden *A.W.* ſhall make his perſonall appearance before the Kings Majeſties Iuſtices of the peace at the next quarter Seſſions of the peace to be holden for the ſaid county of Cambridge, then and there to make anſwer unto ſuch matters as on his Majeſties behalfe ſhall be objected againſt him (by *A.B.* of &c. or concerning &c. and there ſhew the matter (shortly) and ſhall alſo ſtand to, and abide ſuch further order as the ſaid Court ſhall award or ſet downe therein, That then and from thenceforth this preſent Recognisance ſhall be fruſtrate and void, or elſe to remaine in his full force, ſtrength and vertue.

Another for him that hath dangerouſly hurt one.

THe Condition of this Recognisance is ſuch, That whereas the within bounden *R.W.* hath now lately dangerouſly hurt one *I.T.* of *R.* within the ſaid County of Cambridge, Yeoman, giving him divers blowes on the head, face, and left ſide with a Bill, ſo as the ſaid *I.T.* is in danger of death thereby: If therefore the ſaid *R.W.* ſhall make his perſonall appearance before the Kings Majeſties Iuſtices at the next generall Gaole delivery, to be holden in the ſaid County of, &c. Then and there to make anſwer unto the premiſes, and to do and receive that which by the Court ſhalbe then and there enjoyned him, And that he, the ſaid *R.W.* in the meane time doe keepe the peace of our ſaid ſoveraigne Lord the King towards the Kings Majeſty, and all his liege people, That then, &c.

A Condition for Alehouſe-Keepers.

THe condition of this Recog. is ſuch, Whereas the within bounden A. B. is admitted and allowed by the within named Sir *Ed. Peyton*, and *Hen. Vernon* (two of the Kings Majeſties Iuſtices of Peace within the County of Cambridge within written) to keepe a common Alehouſe or Tipling houſe, and to uſe common ſelling of Ale or Beere, onely within the now houſe of him the ſaid A. B. (and not elſewhere) ſituate in the high ſtreet of the Towne of M. within written, and called

This or the like forme, have heretofore bin allowable.

the ſigne of the Hart: If therefore he the ſaid A.B. during ſuch time as he ſhall keepe ſuch common Alehouſe the ſame, ſhall not ſuffer any unlawfull play at the Tables, Dice, Cards, Tenniſſe, Bowles, Cloſh, Quoyts, Loggets, or other unlawfull games to be uſed in the ſaid houſe, or in his Garden, Orchard, or other his ground, or place (ſpecially by meanes of ſervants, Apprentices, common Labourers, or ſuſpected perſons) nor ſhall keepe, or ſuffer to be dreſſed any fleſh to be eaten upon any day forbidden by the Lawes or Statutes of this Realme of England: nor ſhall knowingly and willingly admit, or receive into his ſaid houſe, or any part thereof, any perſon notoriouſly defamed, of, or for theft, inconſtancie, or drunkenneſſe, or that ſhall be forbidden and prohibited by the ſaid A.B. by the Conſtable of M. aforeſaid, for the time being, or by his deputie, to be an unmeet perſon to be received into a common Alehouſe: Nor ſhall keepe or lodge there any ſtrange perſon, above the ſpace of one day and one night together, without notice thereof firſt given to the Conſtable, or his deputie there. And finally, if he the ſaid A.B. during all the time that he ſhall keepe common ſelling of ale or beere in the ſaid houſe, ſhall and doe there uſe and maintaine good order and rule: Then this preſent Recognizance to be void, &c. or elſe, &c.

Or where the Juſtices of peace at their meeting take divers ſuch Recognizances, they may be made ſhortly, as followeth.

MEmorand', *quod die Aprilis, an' regni dom' noſtri Caroli, &c. coram nobis* Ed. Peyton, *militi & Baronetto, & H.F. armig' duobus Iuſticiar' &c. venerunt.*

A.B. *de Newmarket in Com' prædict'* Victualler, *cognovit ſe debere dicto Dom' regi x.li. Et* C.D. *de, &c. & E.F. de, &c. uterque eorum recognovit ſe debere dicto Domino regi v. li. bona & legalia monetæ Angliæ de bonis & catallis ſuis & cuiuſlibet eorum ſuis, fieri & levari ad opus, &c. ſi defecerit in Conditione ſequente.*

The Condition of this Recognizance is ſuch, That if, &c. (and write the Condition at large.)

G.H. *de* Newmarket, *in Com' prædict'* Victualler, *& cognovit ſe debere dicto dom' regi x. li. Et* I.K. *de, &c. & L.M. de &c. uterque eorum recog. ſe debere dicto domino regi v. li. &c.*

Sub Conditione ut ſupra.

N.O. *de* Newmarket, *in Com' prædict'* Victualler, *& cognovit ſe debere dicto dom' regi x. li. Et* P.Q. *de, &c. & R.S. de, &c. uterque eorum recog. ſe debere dicto domino regi v. li. &c.*

Sub Conditione ut ſupra.

T.V.

T.V. *de* Soham, *in Com' pred'* Victualler, *& cognovit ſe debere dñi' dom' regi x̄. li Et.* W. W *de*, *&c. &* I.S. *de*, *&c. uterque eorum recog. ſe debere dicto domini regi vli. &c.*

Sub Conditione ut ſupra.

Et ſic de cæteris.

FOr the manner of this Condition for Alehouſe-keepers, it is (by the ſtatute) partly referred to the diſcretion of ſuch Juſtices of peace, as take ſuch recognisance, or bond, as you may ſee before, *tit. Alehouſes.*

And in ſome Shires the Juſtices of peace did condeſcend and agree upon certain Articles framed by their diſcretions, and generally to be propounded to all common Ale-ſellers, taking the bond for the performance of the ſame articles: a copie whereof they did uſe to deliver to every of them, which manner was avowable alſo.

Amongſt Articles of this kind, I did commend to the Juſtices care theſe three eſpecially.

Firſt, that no Alehouſe-keeper upon the Sabbath day ſhould receive or ſuffer to remaine any perſon whatſoever (as their Gueſts) in any their houſes, or other places, to tipple, eat, or drinke, other than travellers, and ſuch as come upon neceſſarie buſineſſe.

Secondly, that they ſuffer no perſon whatſoever, reſorting to their houſes only to eat or drink, to remain or be there after nine of the clock in the evening, from Michaelmas till Lady day; or from Lady day till Michaelmas, after ten of the clock at night.

Thirdly, that they ſuffer no perſon, reſorting to their houſes onely to eate and drinke, to remaine tipling there above one houre, other than travellers.

But note that now there be divers Articles of far better direction, publiſhed (touching Alehouſes) by Proclamation, given by the Kings Majeſty at Newmarket, the 19. day of January, in the 16. yeare of his Highneſſe reigne of great Britaine, France, and Ireland, *Anno Dom'* 1618. in manner and forme following: *viz.*

FIrſt, that the Juſtices of peace of every County, Citie, or Town corporate within this Kingdome, and the dominion of Wales, doe once every yeere, in the moneths of Aprill and May, aſſemble themſelves, either at a ſpeciall ſeſſions, or ſuch other meeting as they ſhall appoint for that purpoſe (reſpecting the eaſe and convenience of the people of the countrie) and there call before them, or any two of them, whereof one to be of the *Quorum*) all ſuch perſons as do ſell ale or beere by retaile in any place (as well within liberties as without) within ſuch Countie, Citie, or Town corporate; and then and there to take true certificate and information from men of truſt, who be perſons of honeſt converſation, and who not: And to give licence to ſuch perſons, as they in their diſcretions ſhall think meet, to keep common Alehouſes, or Victualling houſes, within the places where ſuch perſons dwell.

2 That in the licenſing of the ſaid Victuallers and Alehouſe-keepers,

the forme of the Recognisance, hereafter following, and the Condition thereunto annexed, be used, and none other,

Memorand' quod die anno regni domini nostri Caroli Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defensoris, &c. coram T. P. & H.D. armiger' Iusticiar' dicti domini Regis ad pacem in Comitatu predict' conservand' assignat', &c. A. B. de, &c. & C.D. de, &c. manuceperunt pro W. St. de, &c. Victualler, *vic. uterque manucept' predict' sub pena quinque librar' & predict' W. St. assumpsit pro seipso sub pena x. li. quas concesserunt se debere dicto dom' Regi, &c. Sub Condit' seq.*

THe Condition of this Recognisance is such, That whereas the above (or within) bounden is admitted and allowed by the said Justices to keep a common Alehouse and Victualling house, untill the first of Aprill (or for the space of one whole yeere next ensuing the date hereof) and no longer, in the house where he now dwelleth, at in the said County of and not elsewhere in the said county. If therefore the said shall not, during the time aforesaid, permit or suffer, or have any playing at Dice, Cards, Tables, Quoits, Loggets, Bowles, or any other unlawfull game or games in his house, yard, garden or backside; nor shall suffer to be, or remaine in his house, any person or persons (not being his ordinary household servant) upon any Sabbath day, or Holy-day, during the time of Divine Service or Sermon; nor shall suffer any person to lodge or stay in his house above one day and one night, but such whose true name and sirname hee shall deliver to some one of the Constables, or in his absence to some of the Officers of the same Parish, the next day following, (unlesse they be such person or persons as he or she very well knoweth, and will answer for his or their forth comming:) nor suffer any person to remaine in his or her house tipling or drinking contrary to the law, nor yet to be there tipling or drinking after nine of the clocke in the night time, nor buy or take to pawne any stolne goods, nor willingly harbour in his said house, or in his barnes, stables, or other where, any Rogues, Vagabonds, sturdy beggers, masterlesse men, or other notorious offenders whatsoever; nor suffer any person or persons to sell or utter any Beere or Ale, or other victuall by deputation, or by colour of his or her Licence. And also, if he shall keepe the true assise and measure in his pots, bread, and otherwise, in his uttering of his Ale, Beere, and Bread; and the same Beere and Ale to sell by sealed measure, and according to the assise, and not otherwise: and shall not utter or sell any strong Beere, or strong Ale, above a peny the quart, and small beere, or small ale, above a halfe-peny the quart, and so after the same rates: and also shall not utter, nor willingly suffer to be uttered, drunk, taken, or tipled any tobacco within his said house, shop, cellar, or other place thereunto belonging. That then. &c,

3 That every Alehouse-keeper and Victualler, so to bee licenced,

doe

doe enter into Recogniſance with two able ſureties, to be bound in 5.l. a peece, and the principall 10.li. at the leaſt, for the performance of the Condition of the ſaid Recogn. which ſhall endure but for one whole yeare, and then to determine, unleſſe it ſhall ſeeme fit to the Juſtice of peace to renew the ſame againe, by taking a new recog. of the ſame condition: and whatſoever date the recog. ſhall have, it is to endure but untill the ſaid moneths of Aprill and May, or one of them.

4 That the Clerks of the peace, Town-clerks, or their Deputies reſpectively, be called to attend the Juſtices of peace at ſuch their meetings, or aſſemblies, and that they do there take the recog. aforeſaid, of every Victualler or Alehouſe-keeper licenced, and do duely enter them amongſt the records of the Seſſions of the peace in their charge, whereby his Majeſtie may be duely anſwered of the forfeitures that ſhall be made of the parties ſo bound.

5 That the Clerkes of the peace, and Towne-clerks aforeſaid, or their deputies, ſhall within ſome convenient time after the taking of the ſaid recogniſance, faire ingroſſe the Recogniſance and condition in parchment, which they ſhall keepe as the Originall, and ſend a true copy of the ſaid recogniſance, examined with the ſaid originall, to every Alehouſe-keeper allowed, whereby he may the better informe himſelfe what he and his ſuretie are bound to obſerve.

6 That the Clerkes of the peace, and Towne-Clerkes, or their deputies, doe write out, and bring with them to every Seſſions of the peace, or other meeting of the Juſtices, a Regiſter booke containing the true names, ſirnames, and places where every Alehouſe-keeper or Victualler that is licenced doth dwell, to the end it may appeare to the Juſtices of the peace who be licenced, and by whom, and who be not, and what other alterations have beene from time to time, for the placing of men of honeſt and good converſation, and diſplacing of others of ill behaviour.

7 That the Clerkes of the peace, and Town-clerkes and their deputies, may take of every Alehouſe-keeper for their fee, for performing of the ſervices aforeſaid, at the time of the acknowledgment of the ſaid Recogn. the fee of xviii.d. and no more, over and above the fee of xii.d. allowed for the Juſtices clerkes by the ſtatute, which ſhall be paid to the ſaid Juſtices clerkes.

8 That in caſe the Alehouſe-keeper, not knowing of the Juſtices meeting, or being hindred by ſickneſſe, or other ſuch like impediment, ſhall faile of admittance at the generall or publike aſſemblies, and ſhall notwithſtanding be admitted or licenced by two Juſtices of the Peace (whereof one to be of the *Quorum*) the Recogniſance with condition faire ingroſſed in parchment in the forme preſcribed, as aforeſaid, ſhall forthwith, or at the next Seſſions at the furtheſt, be returned to the Clerkes of the Peace, or the Towne-clerkes, repectively under the hands of the Juſtices, before whom ſuch Recogniſance was taken, together alſo with the ſaid fee of eighteene pence for the entring, regiſtring, making, and delivering of a copie under his hand to the Alehouſe-keeper, as aforeſaid.

9 That none be licenced or allowed to keep an Alehouſe that hath not one convenient lodging at leaſt in his or their houſes, for the lodging of any paſſenger or traveller, and to have alwayes in her or their houſes good and wholſome ſmall beere or ale, of two quarts for a penie, for the reliefe of the Labourer, Traveller, or others that call for the ſame.

10 That the Iuſtices of peace within their ſeverall Precincts, doe not permit or ſuffer any unlicenced Alehouſe-keeper, or victualler, to ſell beer or ale, but that they proceed againſt them by all due and lawfull meanes whatſoever, and that they be very carefull, from time to time, to cauſe the Brewers to be proceeded againſt in their generall and quarter Seſſions, for delivering Beere, or Ale, to ſuch unlicenced perſons, according to the ſtat. in that caſe provided.

11 That the Clerks of the Peace, or town-clerks reſpectively, do once every yeare, in *Trinitie* Terme, make and bring in a Briefe of all ſuch Recogniſances as ſhall be taken within every County, City, and Towne corporate, into the office of the Patentees, (appointed by them for that purpoſe) to the end all concealments of Recog. taken in that behalfe may be diſcovered; and the benefit accruing unto his Majeſtie, by ſuch as wilfully breake the ſame, may be more duely proſecuted: of which, that his Highneſſe be not defrauded, order is given to the Patentees, that with the allowance of the chiefe Iuſtice of the Kings Bench, there be appointed Committees in every Countie, for the Recoverie thereof from time to time.

12 That the Iuſtices of Aſſiſe in their Circuits, and Iuſtices of Peace at their generall Seſſions of the peace, doe from time to time enquire of the due execution of theſe preſents, and of all other abuſes, diſorders, and miſdemeanors whatſoever, committed, or ſuffered, againſt the proviſions aforeſaid, and the true meaning of them.

A Licence to keepe an Alehouſe Cap. 124.

Cantabr. IOhn *Cotton* Knight, and *Michael Dalton* Eſquire, two Iuſtices of the P. of our Soveraigne Lord the Kings Majeſtie, in his Highneſſe Countie of C. ſend greeting in our Lord God everlaſting. Know ye, that we the ſaid Iuſtices, of good credible report to us made, by divers credible and honeſt perſons, &c. that I. W. of, &c. is a man meet to keep a common Alehouſe in the houſe where he now dwelleth, have licenced, allowed, and admitted, and by theſe preſents doe licence, allow, and admit the ſaid I.W. to keep a common Alehouſe or tipling houſe at L. for one whole yeer next enſuing the date hereof, ſo that the ſaid I.W. ſuffer not any unlawful games to be uſed in his ſaid houſe, nor any evil rule or order to be kept within the ſame, during the time of his ſaid Licence: for the uſing of which Licence accordingly, we doe you to wit, that we have bound the ſaid I.W. in x. li. and two other ſufficient ſureties, in an hundred ſhillings a peece by Recogniſance to the Kings Majeſties uſe. In witneſſe whereof, we have hereunto ſet our hands and ſeales. Dated, &c.

Or

Or thus.

I. C. and *M.* D. two Juſtices of the peace of our Soveraigne Lord, &c. To all Bailiffes, Conſtables, and other the Kings Majeſties officers, greeting: Know ye, that we the ſaid Juſtices have licenced, and by theſe preſents doe licence I. W. of &c. to keepe a common Alehouſe in L. aforeſaid, for one whole yeare next enſuing the date hereof: and have bound the ſaid I. W. by Recogniſance with ſureties to the Kings Majeſties uſe, that he ſhall maintaine good rule: and further to do and behave himſelfe therein, in all things according to the Lawes and Statutes of this Realme, &c.

Or thus.

WE whoſe names are hereunder written, Juſt. of the P. of our Soveraigne Lord the King, within the County of Camb. do licence and allow I. W. of L. in the ſaid County, to keepe a common Alehouſe or tipling houſe in L. aforeſaid, for and during one whole yeere next enſuing the date hereof, ſo as he doth not ſuffer any unlawfull games to be uſed in his houſe, nor any evill rule to be kept there, but doe behave himſelfe therein according to the Lawes and Statutes of this Realme in that behalfe made and provided. In witneſſe, &c. *Cantabr.*

A Licence to Brew, and keepe an Alehouſe.

Weſt. 2. WHereas A. B. of W. in the County of D. Husbandman, hath come before us, *Iohn Cutts*, Knight, and *Fr. Brakin* Eſquire, two of the K. Majeſties Juſt. of P. within the ſaid County, and bound himſelfe in a Recog. with ſufficient ſureties, to brew and ſell, and keepe a common Alehouſe, according to the ſtat. made in the fifth yeare of the reigne of our late Soveraigne Lord K. *Ed.* 6. Now know ye, us the ſaid *Iohn Cutts* and *Fr. Brakin*, to have licenced the ſaid A. M. to brew, to ſell, and to keepe a common Alehouſe, according to the ſaid Statute. Given under our hands, the 13. of Iuly, in the, &c. *Cantabr.*

A Licence for a Recuſant to travell, &c.

WHereas R. C. of L. in the County of C. being a Recuſant (convicted) hath confined himſelfe to L. aforeſaid, being the uſuall place of his aboad, according to the ſtatute made in the 35. year of the reign of our late Soveraign Lady Queen *Elizabeth*: Know ye, that we, &c. foure of the Kings Majeſties Juſtices of peace within the ſaid Countie, doe by the conſent of the right reverend Father in God *Nicholes* by Gods providence Lord Biſhop of Ely, at the requeſt of the ſaid R. C. for the diſpatch of his urgent and neceſſary buſineſſe, grant and give licence to the ſaid R. C. to travell out of the precincts or compaſſe of five miles limited by the ſaid ſtatute, at all times, untill the firſt day of Novem. *Cantabr.*

next

next comming, and at the ſaid firſt day of Nov. to returne againe to Laforeſaid. In witneſſe &c. See *hic antea tit. Recuſants.*

A Teſtimoniall or Paſport to travell.

Cantabr. SIr *Roger Milliſent* Knight, and Sir *Iames Reynolds* Knight, two of the Kings Majeſties Juſt. of P. within the ſaid Countie, to all Juſt. of P. Mayors, Bailiffes, Conſtables, and all other his Majeſties officers and Miniſters whatſoever, ſend greeting in our Lord God everlaſting. For ſmuch as the bearer hereof E. P. (*here ſhew the cauſe of his travell*) hath deſired our Teſtimoniall (or Licence) for his ſafe travell unto the Citie of B. where (*here ſhew whither he is to goe.*) In conſideration whereof, know ye, we the ſaid Sir *Roger Milliſent*, and Sir *Iames Reynolds*, ſo far as in us lieth, have licenced the ſaid E. P. to travell and paſſe the direct way from H. within the ſaid Countie of C. whereas he lately dwelled, unto the ſaid Citie of B. ſo as his journey be not of longer or further continuance than twenty dayes next after the date hereof, praying you, & every of you, not to moleſt or trouble the ſaid poore man in his travell, but to permit and ſuffer him peaceably to paſſe, ſo as he ſhew himſelfe in no reſpect offenſive to his Majeſties lawes. In witneſſe, &c.

But upon ſuch licence, the perſons thus licenced to travell, may neither beg, nor wander idly, nor out of their direct way. Beſides, the Juſtices muſt be ſparing to graunt ſuch licences, except in caſes of neceſſity. For except the perſon ſo licenſed be one that hath ſuffered ſhipwracke, or a Souldier, or Mariner comming from the Seas, &c. *hic cap.* 47. or be a Labourer, and onely for hay and harveſt time; or elſe be a ſervant departing from his Maſter, *hic cap.* 36. the Juſtices of peace are to make no ſuch licence, or Teſtimoniall (as it ſeemeth:) And as for the manner of ſuch teſtimoniall or licence for perſons ſuffering ſhipwracke, and Souldiers comming from Sea, and in what manner ſuch perſons may travell, ſee *hic antea, tit. Rogues, cap.* 47.

But in other caſes where any perſon ſhall become poore, lame, blind, or otherwiſe diſeaſed, or decayed, and ſhall have juſt cauſe to travell, they muſt be provided of money or maintenance for their travell, otherwiſe the Juſtices ought to forbeare to grant any ſuch licence, and muſt rather cauſe them to be ſent to, and ſettled in, the towne where they laſt dwelt.

Alſo it is fit that ſuch perſons doe get the allowance of ſuch his Paſport under the hand of ſome one Juſtice of peace, in every Countie where he is to paſſe.

The forme of a Teſtimoniall for the conveying of a Rogue that hath beene puniſhed according to the Stat. of 39. El. c. 4.

Cantabr. I *Oliver Stile*, a ſturdy vagrant beggar, (of low perſonage, red haired, and having the naile of his right thumbe cloven) aged about yeares, was this ſixt day of Aprill, in the x. yeare of the reigne of our Soveraigne Lord King *Charles*, of England, &c. openly whipped at W. in the ſaid County, (according to the Law) for a wandring rogue, and is aſſigned

aſſigned to paſſe forthwith from pariſh to pariſh by the officers thereof, the next ſtraight way to P. in the County of W. where (as he confeſſeth) he was borne, (or dwelled laſt by one whole yeare, &c. if the caſe be ſuch) and he is limited to be at P. aforeſaid, within ten dayes now next enſuing, at his perill. Given at Weſtwratting, under the hand and ſeale of *M. D.* Eſquire, one of his Majeſties Juſtices of peace in the ſaid county of Cambridge.

Note by the words of the Statute 39. *El.* 4. ſuch teſtimoniall muſt be under the hand and ſeale of the Juſt. of peace, Conſtable, headborough, and of the Miniſter of the pariſh, or of any two of them; and yet it is taken that the Juſtice of peace alone under his hand and ſeale may make ſuch teſtimoniall. *Lamb.* 206.

Note alſo, that it is needfull both in this and in all other Teſtimonials, Certificats, Safe-conducts, and Paſports whatſoever, to note and ſpecifie expreſly ſome aſſured marks of the party, as his ſtature, colour of hair, complexion, or (if it may be) ſome apparent ſcarre, or other note, by which he may be infallibly diſtinguiſhed and knowne from others; leſt (as is often found) both himſelfe take the benefit thereof, and he alſo communicate the uſe of the ſame to others, in abuſe of him that made it, and of the Law in that behalfe provided.

A Teſtimoniall for ſuch as have ſuffered Shipwracke.

A B. of C. in the Countie of Norff. Eſquire, one of the Kings Maje- *Norff.*
ſties Juſtices, &c. To all, &c. Foraſmuch as the bearer hereof I. S. aged about, &c. having lately beene at ſea, in a ſhip called, &c. and hath ſuffered ſhipwracke, and got to land at Y. in the ſaid county of Norf. upon the day of laſt paſt (as I am credibly informed, as well by the report of the ſaid I. S. as alſo by the teſtimonie of divers the inhabitants of Y. aforeſaid) and for that the ſaid I. S. hath not wherewith to relieve himſelfe in his travell homewards to D. in the county of H. where he ſaith he was born (or hath a dwelling, &c.) Theſe are therefore to pray you, and every of you to whom theſe preſents ſhall come, not to moleſt or trouble the ſaid I. S. in his travell to D. aforeſaid, where he is limited to be within dayes next after the date hereof; but deſiring you rather to relieve him in his neceſſity, as to you ſhall ſeem meet: and withall, you the Conſtables of every Towne where he ſhall come, to helpe him with lodging in convenient time, ſo that he travelleth the direct way to D. aforeſaid, not doing any thing contrary to the lawes and ſtatutes of this Realme. In witneſſe whereof, &c.

The like (with very little alteration) may be made for a poore Mariner, *Mariner or Souldier.*
or a poore Souldier, comming from the ſeas, or from beyond the ſea. *Vide antea, tit. Rogues.*

But theſe two laſt Teſtimonials muſt be made by ſome Juſtice of peace dwelling neere where ſuch perſons doe land.

CAP.

Cap. 125.

Warrant' custodi Gaolæ, ad recipiend' prisonarium pro felonia.

EDwardus Peyton *Miles & Baronettus, unus Justiciar' Domini regis nunc ad pac' in com' præd' conservand' necnon ad diversa felon' transgr' & alia malefact' in eodem com' audiend' & terminand' assig' custod' Gaolæ dict' domini regis in com' præd' aut ejus locum tenenti, & cuilibet, salutem. Quia R.T. nuper de I. in com' præd'* Laboret, *jam pro suspitione cujusdam felonie per ipsum (ut dicitur) perpetrat' per Constabul' villæ de R. in com' præd' arrestat': Ideo ex parte dicti dom' regis vobis & cuilibet vestrum præcipio quod ipsum R. in custod' vestram recipiatis, seu unus vestrum recipiat, ibidem moretur' quousque secundum legem & consuetudinem regni Angliæ à custod' vestra deliberetur, Dat' apud Isleham, &c.*

Alias.

EDw. P. &c. to the keeper of the Kings Majesties Gaole at the Castle of Cambridge, or to his deputie there, greeting: These are in his Majesties name to charge & command you, that you receive into your said gaole the body of R.S. late of, &c. taken by F.C. and I.S. Constables of the Towne of W. and by them brought before me for suspition of felony, &c. and that you safely keep the said R.S. in your said Gaole, untill the next generall gaole deliverie for the said County, if he be not bailable: Or if he bailable, then thus, untill he shalbe thence delivered by due order of his Majesties Lawes. And hereof faile you not, &c.

A Mittimus of a felon, after his examination taken.

Cuntabr. IOhn Cotton knight, one of the Just. &c. To the Keeper of his Majesties gaole at the Castle of Cambridge in the said County, &c. Greeting. I send you herewithall the body of A.B. late of G. Laborer, brought before me this present day, and charged with the felonious taking of twenty sheepe, (which also he hath * confessed upon his examination before me) and therefore these are (on the behalfe of our said Soveraign Lord) to command you, that immediately you receive the said A.B. and him safely keep in your said Gaole, untill that he shall be thence delivered by the due order of his Majesties Lawes. Hereof faile you not, as you will answer for your contempt at your own peril. Given at Chevely, the day of in the yeare of the reigne of our said Soveraigne Lord *Charles*, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c.

* But this clause maketh the prisoner not to be baileable.

Alias.

Or these Warrants or Mittimus, whereby a prisoner shall be sent to the Gaole, may be made in the Kings name, and the *Teste* may be under the name of the Justice of peace, as followeth.

Carolus

Carolus Dei grat' Rex Angl' &c. Custi Gaole nostre de Cantab' vel ejus locum tenenti, salut'. Quia R. S. super de B. in Com' Essex laborer, jam pro suspic' cujusdem feloniæ per ipsum ut dicitur perpetrat' arrest'. Ideo vobis & cuilibet vestr' precipimus qd ipsum R. in custod' vestram Gaole nostre predict' recipiatis, seu unus vestrum recipiat ibidem morat' quousque secundum legem regni nostri Angliæ à custodia vestra deliberetur. Teste Edm. P. &c.

A Mittimus to send to the goale an Alehouse-keeper that victualleth contrary to commandement, &c.

HEnry Vernon, and Roger Thornton Esquires, two of the Kings Majesties Just. of the peace within the said County of Cambridge. To the keeper of the Kings Majesties Gaole at C. Greeting. Whereas R. D. of B. in the said County of Cambridge (upon complaint lately made unto us of the evill rule kept and suffered by him in his house, and other misdemeanors) by warrant under both our hands and seales was discharged of his Alehouse-keeping, and was commanded from us that he should thenceforth use no more common selling of Ale or Beere: And whereas we are credibly informed that the said R. D. (notwithstanding our said Warrant and commandement given him to the contrary, as aforesaid) hath ever since obstinately, and upon his own authority, taken upon him to * keepe a common Alehouse or tipling house, and still continueth the same: We doe therefore send you herewithall the body of him the said R. D. commanding you in his said Majesties name to receive him into your said Goale, and there safely to keepe him, untill such time as he shalbe from thence delivered by due order of Law. And hereof faile you not at your perill. Dated at the day of in the yeare of, &c.

Cantab.

* Or, to use commonly selling of ale or beere.

Or thus.

WHereas by warrant or commandement from divers Just. of P. of this County, I. S. of, &c. hath been suppressed for keeping an Alehouse, &c. And forasmuch as complaint hath notwithstanding been made to us (this present day) that the said I. S. hath and doth, contrary to the said commandement, and contrary to the statute in that behalfe provided, still keepe a common Alehouse. Therefore we doe send you herewithall the body of the said I. S. commanding you, &c. to receive the said I. S. into his Majesties Gaole, and there safely to keepe him for three dayes without baile or mainprise; and afterwards untill he shall with two sureties enter into Recognisance, that he shall not keep any common Alehouse, or use common selling of Ale or Beere, and pay his fine of xx. s. according to the statute in that case made and provided. Hereof faile you not, &c.

A Mittimus (to the Goale) of the reputed father of a Bastard child, &c.

Contabr. I Send you herewithall the body of R. C. of B. in the county of C. Labourer, brought before me this present day, and charged by F. S. of the same Towne to have gotten her with childe, and for that the said R. refuseth to put in security for his appearance at the next quarter Sessions, and to the end he may be forthcomming when as order shall be taken for the reliefe and discharging of the said towne of B. and for the keeping of the said child (when it shall happen to be borne) according to the statute in that case provided: These are therefore on the Kings Majesties behalfe to charge and command you, that immediately you receive the said R. C. and him safely to keepe in your said goale, untill such time as he shall be from thence delivered by due order of law. And hereof fail you not as you will answer your contempt at your perill. Dated, &c.

In every Mittimus, the cause of the commitment is to bee set downe, to the end it may appeare whether the prisoner bee baileable or no. See hereof before in the title *Baylement.*

Also where the Justices of Peace out of their Sessions may heare and determine, and so may commit offenders for the offence or fine, it is necessary that in their Mittimus there be contained the manner of the offence, and how long time the offender is to be kept in prison for it. See the Mittimus for guns afterwards.

A Mittimus, to the house of Correction, of a dangerous Rogue.

Contabr. *Iohn Richardson* Doctor of Divinity, and *Michael Dalton* Esquire, two of the Kings Majesties Justices of the peace within the said County of Cambridge. To the Master or Governour of the house of Correction at Bottisham (for the East side of the said county) or to his deputy there, Greeting: Whereas I. S. a sturdy vagrant begger, was this day of September, *anno domini* brought before us, and charged aswell with begging and idle wandring abroad, as also with other lewd and disorderly behaviour, so as he appeareth to us to be dangerous to the inferiour sort of people (or such a one as will not be reformed of his roguish life) contrary to his Majesties Lawes in such behalfe provided: These are therefore to will and require you, to receive the said I. S. and him safely keepe in your said house, untill the next quarter Sessions to be holden in the said County: And during all that time (that he shall so continue with you) that you hold him to worke and labour, and to punish him by putting Fetters, or Gyves upon him, and by moderate whipping him, as in good discretion you shall find cause, yeelding him for his maintenance onely so much as he shall deserve or earne by his labour and work. And that at the said next quarter Sessions you have the said I. S. there, together with this our warrant. And hereof see that you faile not, &c. Dated, &c.

Or such rogue may be sent to the Goale. See before tit. Rogues.

See stat. 5. Iac. c. 4. & 39 El. c. 4.

A

A Mittimus to the house of Correction of a disorderly servant, or other disorderly person.

I Have sent you herewithall the body of E. C. of W. in the said countie of C. being an idle, dissolute, and disordered fellow: (or one that will not keep his service, nor follow any honest course of life) These are therefore to will and require you to receive the said E. C. and him safely to keepe (* untill that hee shall be thence delivered by warrant from my selfe, or some other his Majesties Justices of peace, for this county of Cambridge) and in the meane time to hold him to worke, and to punish him by moderate whipping, and otherwise according to the law in such cases provided. And hereof see that you faile not, at your perill. Dated, &c. See the stat. 7. *Iac. cap.* 4. *Cantabr.*

* Or, by the space of three dayes next after the date of this Warrant.

Another for one that runneth away, leaving her charge to the towne.

WEe have sent you herewithall the body of I. R. of W. single woman, being lately delivered of a child, and one that is able to labour, and thereby to relieve her selfe, and her said child, and hath notwithstanding lately runne her way, and left her childe upon the parish, to the charge of the same parish, contrary to the stat. in that behalfe provided: These are therefore to will and require you to receive the said I. R. and her safely to keepe, untill the next quarter * Sessions to be holden for this county, and in the meane time to hold her to such workes, and to give her such due correction, by moderate whipping, or otherwise, as shall bee fitting in your discretion, and according to the Law in that behalfe provided, yeelding her for her maintenance, &c. *ut supra.* And hereof see that you faile not at your perill. Dated, &c. See the statute. 7. *Iac. cap.* 4. *Cantabr.*

* Or else such party must be delivered at the meeting of the Iust. upon privie search made for Rogues, & not otherwise.

7. *Iac. cap.* 4. *& vide antea tit. Rogues, his.*

Note, if any meane person shall but threaten to runne away, and leave their family (as aforesaid) any two Justices of Peace of that division, may send them to the house of correction, as aforesaid; but such their threatning must be proved by two sufficient witnesses upon oath, before the said Justices of peace. *Vide antea tit. Rogues.*

A Mittimus to the house of Correction of the Mother of a Bastard child.

WEe have sent you herewithall the body of I. C. of W. in the said county, single woman, being lately delivered of a Bastard child, likely to be chargeable to the Parish of W. aforesaid; and for that the said I. C. is able to labour, and that thereby shee may the better relieve her selfe & her said child, These are therefore to will and require you to receive the said I. into your said house, there to be punished, and set on worke during the terme of one whole yeere, according to the statute in that behalfe provided. And hereof faile you not, &c.

Rogues, vagabonds, sturdy beggars, and other idle, and disorderly persons sent to the house of correction, are there to bee punished by putting fetters or gyves upon them, and by moderate whipping. 7. *Iac. cap.* 4.

So persons running, or threatning to run away, and leave their family to the parish, ibid.

The

A Mittimus (to the Gaole) of the reputed father of a Bastard child, &c.

Cantabr. I Send you herewithall the body of R. C. of B. in the county of C. Labourer, brought before me this present day, and charged by F. S. of the same Towne to have gotten her with childe; and for that the said R. refuseth to put in security for his appearance at the next quarter Sessions, and to the end he may be forthcomming when as order shall be taken for the relieſe and diſcharging of the ſaid towne of B. and for the keeping of the ſaid child (when it ſhall happen to be borne) according to the ſtatute in that caſe provided: Theſe are therefore on the Kings Majeſties behalfe to charge and command you, that immediately you receive the ſaid R. C. and him ſafely to keepe in your ſaid goale, untill ſuch time as he ſhall be from thence delivered by due order of law. And hereof fail you not as you will anſwer your contempt at your perill. Dated, &c.

In every Mittimus, the cauſe of the commitment is to bee ſet downe, to the end it may appeare whether the priſoner bee baileable or no. See hereof before in the title *Baylement.*

Alſo where the Juſtices of Peace out of their Seſſions may heare and determine, and ſo may commit offenders for the offence or fine; it is neceſſary that in their Mittimus there be contained the manner of the offence, and how long time the offender is to be kept in priſon for it. See the Mittimus for guns afterwards.

A Mittimus, to the houſe of Correction, of a dangerous Rogue.

Cantabr. *Iohn Richardſon* Doctor of Divinity, and *Michael Dalton* Eſquire, two of the Kings Majeſties Juſtices of the peace within the ſaid County of Cambridge. To the Maſter or Governour of the houſe of Correction at Bottiſham (for the Eaſt ſide of the ſaid county) or to his deputy there, Greeting: Whereas I. S. a ſturdy vagrant begger, was this day of September, *anno domini* brought before us, and charged aſwell with begging and idle wandring abroad, as alſo with other lewd and diſorderly behaviour, ſo as he appeareth to us to be dangerous to the inferiour ſort of people (or ſuch a one as will not be reformed of his roguiſh life) contrary to his Majeſties Lawes in ſuch behalfe provided: Theſe are therefore to will and require you, to receive the ſaid I. S. and him ſafely keepe in your ſaid houſe, untill the next quarter Seſſions to be holden in the ſaid County: And during all that time (that he ſhall ſo continue with you) that you hold him to worke and labour, and to punish him by putting Fetters, or Gyves upon him, and by moderate whipping him, as in good diſcretion you ſhall find cauſe, yeelding him for his maintenance onely ſo much as he ſhall deſerve or earne by his labour and work. And that at the ſaid next quarter Seſſions you have the ſaid I. S. there, together with this our warrant. And hereof ſee that you faile not, &c. Dated, &c.

Or ſuch rogue may be ſent to the Goale. See before tit. Rogues.

See ſtat. 5. Iac. c. 4. & 39 El. c. 4.

A

A Mittimus to the house of Correction of a disorderly servant, or other disorderly person.

IHave sent you herewithall the body of E. C. of W. in the said countie of C. being an idle, dissolute, and disordered fellow: (or one that will not keep his service, nor follow any honest course of life) These are therefore to will and require you to receive the said E. C. and him safely to keepe (* untill that hee shall be thence delivered by warrant from my selfe, or some other his Majesties Justices of peace, for this county of Cambridge) and in the meane time to hold him to worke, and to punish him by moderate whipping, and otherwise according to the law in such cases provided. And hereof see that you faile not, at your perill. Dated, &c. See the stat. 7. *Iac. cap.* 4. *Cantabr.*

* Or, by the space of three dayes next after the date of this Warrant.

Another for one that runneth away, leaving her charge to the towne.

WEe have sent you herewithall the body of I. R. of W. single woman, being lately delivered of a child, and one that is able to labour, and thereby to relieve herselfe, and her said child, and hath notwithstanding lately runne her way, and left her childe upon the parish, to the charge of the same parish, contrary to the stat. in that behalfe provided: These are therefore to will and require you to receive the said I. R. and her safely to keepe, untill the next quarter * Sessions to be holden for this county, and in the meane time to hold her to such workes, and to give her such due correction, by moderate whipping, or otherwise, as shall bee fitting in your discretion, and according to the Law in that behalfe provided, yeelding her for her maintenance, &c. *ut supra.* And hereof see that you faile not at your perill. Dated, &c. See the statute. 7. *Iac. cap.* 4. *& vide antea tit. Rogues, his.* *Cantabr.*

* Or else such party must be delivered at the meeting of the Iust. upon privie search made for Rogues, & not otherwise.

7. *Iac. cap.* 4.

Note, if any meane person shall but threaten to runne away, and leave their family (as aforesaid) any two Justices of Peace of that division, may send them to the house of correction, as aforesaid; but such their threatning must be proved by two sufficient witnesses upon oath, before the said Justices of peace. *Vide antea tit. Rogues.*

A Mittimus to the house of Correction of the Mother of a Bastard child.

WEe have sent you herewithall the body of I. C. of W. in the said county, single woman, being lately delivered of a Bastard child, likely to be chargeable to the Parish of W. aforesaid, and for that the said I. C. is able to labour, and that thereby shee may the better relieve her selfe & her said child, These are therefore to wil and require you to receive the said I. into your said house, there to be punished, and set on worke during the terme of one whole yeere, according to the statute in that behalfe provided. And hereof faile you not, &c.

Rogues, vagabonds, sturdy beggars, and other idle, and disorderly persons sent to the house of correction, are there to bee punished by putting fetters or gyves upon them, and by moderate whipping. 7. *Iac. cap.* 4.

So persons running, or threatning to run away, and leave their family to the parish, ibid.

The

The mother of a Baſtard child,&c. ſhall be ſet on work,& puniſhed, *ib.*

But where by the plaine letter of the Law, there is not authority given to whip or puniſh offenders (ſent to the houſe of correction) there let the Juſtices of peace forbeare to appoint or order any whipping, except it be in open Seſſions, or by order of the Quarter Seſſions.

Note, that the greater part of the Juſtices of peace aſſembled at the quarter ſeſſions, may ſet downe orders for the correction and puniſhment of Offenders, committed to the houſe of Correction.

And the houſes of Correction are to be uſed and employed for the keeping, correcting, and ſetting to worke of ſuch perſons as ſhall bee ſent thither. See *ſtat. 7. Iac. cap. 4.*

What manner of perſons are to be ſent to the houſe of correction, See *ſtat. 7. Iac. cap. 4. & hic cap. 11. 17. 31. 40. 47. 57.*

A Mittimus to ſend to the gaole ſuch as ſhoot, &c. in Guns. CAP. 126.

To the Keeper of his Majeſties Gaole at the Caſtle of Cambridge, and to his deputy or deputies there, and to every of them.

Cantabr. FOraſmuch as this preſent day A.B. and C. D. of in the ſame county Yeomen, did arreſt and bring before me at (aforeſaid) one I. at S. in the ſaid county Mariner, whom they had ſeene, and found the ſame day (as they ſaid) ſhooting in a hand-gunne (charged with powder and a pellet) at a Conie in a certaine place in C. within the ſaid County, called the Church-field, contrarie to the law of this Realme, and thereupon prayed mee that juſtice might be done in that behalfe: I *Iohns Cuttes* Knight, being the next Juſtice of the peace in the ſaid county to the place aforeſaid, did then at aforeſaid, upon the ſaid requeſt, take the examination of the ſaid I. at S. and did alſo then and there heare the proofes of them the ſaid A. B. and C. D. touching the ſaid offence, and for that it did then manifeſtly appeare unto mee, as well by the teſtimonies of them the ſaid A. B. and C. D. as alſo by the plaine confeſſion of him the ſaid I. at S. that he had not then Land, tenements, fees, annuities, or offices to the cleare value of one hundred pounds, and that he had ſhot in the ſaid Hand-gun, in manner and forme as is aforeſaid: I doe ſend you herewithall the body of him the ſaid I. at S. as lawfully convicted of the ſaid offence before me: requiring you in his Majeſties name to receive him into your ſaid Gaole, and him there ſafely to keepe (as his Majeſties priſoner) untill that he ſhall have truely paid the paine and forfeiture of x.l. of lawfull money of England, laid upon him for his ſaid offence, by the ſtatute thereof made in the three and thirtieth yeere of the Reigne of the late King *Henry* the eighth; that is to ſay, the one moity thereof to our ſaid Soveraigne Lord; and the other moity to them the ſaid A B. and C. D. the firſt bringers of him before me. And this ſhalbe your ſufficient warrant in this behalfe. Hereof faile you not

Lamb. 391.

Lam.

as you will answer for your contempt at your owne perill: Yeoven at aforesaid, the twentieth day of *March*, in the yeare of the Reigne of our said Soveraigne Lord *Charles*, by the grace of God, King of England, Scotland, France and Ireland, &c. Defender of the Faith, &c.

By me the said *Iohn Cutts*.

The Justices Record thereof.

MEmorand. quod vicesimo die Martii anno Regni Domini nostri Caroli, *Dei gratia, Ang', Scotiæ, Franciæ, & Hiberniæ Regis, fidei defensor', &c. A. B. & C. D. de in com' præd.* Yeomen, *Quendam I. at S. de in dicto com'* Mariner *invener. & viaerunt apud in com' præd. die & anno supradict' cum quodam tormento (Anglice vocat' a hand Gun) onerato pulvere tormentario, & globo plumbeo (Anglice* charged with gun-powder, & a leaden bullet) *in quendam cuniculum adtunc existent' in quodam loco ibid. vocato* Church-field, *sagittantem, & exonerantem dictum torment' contra formam stat' (in Parliament' domini* Henr. *nuper Regis Angliæ octavi, apud Westminst' anno Regni sui tricesimo tertio tent') provis. ac editi: Ac proinde die & anno supradict' præfat' I. at S. arrestaverunt, & apud præd. coram me* Iohanne Cuts *milite, uno & dicto loco proximo Iustic' dicti domini Regis ad pacem in dicto com' conservand. (Necnon ad diversas transgress. & alia malefacta in eodem com' perpetrata audiend. & terminand.) assignator': adtunc una secum adduxerunt, petentes inde justitiam fieri. Qua quidem petitione audita, ego præfatus* Iohannes Cuts *apud præd. die & anno suprad. debite superinde examinavi præf. I. at S. ac probationes præd. A.B. & C.D. in hac parte cepi: ac propterea quod tam per probationes prædict' quam per confessionem ipsius I. at S. adtunc & ib. apparuit mihi manifeste quod præf. I. at S. (cum non haberet in jure suo proprio) nec in jure uxoris suæ ad usum suum proprium, nec aliqui alii ad usum ejusdem I. at S. haberent terras, tenementa, feoda, annuitates, aut officia (ad clarum annuum valorem centum librarum) in tormento prædicto modo & forma prædictis sagittasset, contra formam statuti prædicti, Ego præfatus* Iohannes Cuts *prænominatum I. at S. die & anno supradict' proximo Gaolæ dicti domini Regis apud Cantabr' in com' præd. (de transgress. prædict' coram me convictum) commisi, ibidem moraturum quousque pœnam & foris facturam decem librar' legalis monet' Ang' vere solverit, viz. unam medietatem inde dic' domi Regis, & alteram medietat. inde dic' A.B. & C.D. primis ejusd. I. at S. coram me dicturibus. In quor' omnium fidem & testim' ego præf.* Iohan. Cuts, *his præsentibus sigil' meum apposui. Dat' apud præd. die & anno primum supradictis.*

Per me præf. Iohannem Cuts.

Cantabr.

Bailment. CAP. 127.

Lam. 341.

MEmorand. quod secundo die mensis Septembris anno regni dom' nostri Caroli, *&c. venerunt coram nobis* Iohanne Cage *milite, &* Roberto Castle *Armig' duobus Iustic. dict. domini Regis ad pacem in Com' præd. conservandam assignat' (apud H. in com' prad.) A.B. & C.D. de E. in dict' comit'* Yeomen, *& ceperunt in ballivum, usque ad proximam gaole deliberationem in dicto comitat' tenend. quendam F. G. &* r. Laborer, *captum &*

detentum in prisona pro suspicione cujusdam feloniæ, &c. Et assumpser' super se, sc. quilibet præd' A.B. & C.D. sub pœna viginti libr' bonæ & legal' monet' Angl'. Et præd. F.G. assumpsit pro seipso sub pœna 40. libr' similis monetæ de bonis & catallis, terris & tenement' eor' quorumlibet, & cujuslibet eor' ad opus dicti Dom' Regis, hæredum & successorum suor' levandar' si præfat. F.G. ad eandem proximam gaolæ deliberat' personaliter non comparabit coram Iusticiariis dicti Dom' Regis, ad dictam gaolam deliberand' assignatis, ad standum recte de felonia præd. & ad respond. dict' Dom' Regi inde & ibid. de & super omnibus quæ illi objicientur. Dat' sub sigill. nostris, die & anno primum supradictis. Vid. anteatit. Baylement.

Alias: (sc. *if the Gaoler can conveniently bring the prisoner before the Iustices.*)

MEmorand', qd. *die Augusti, &c. A.B. de C. &c. & E.F. de G. &c. venerunt coram nobis M.D. & I.B. Armig' duobus Iust' &c. & manucep' pro I.S. de &c. uterq; eorum sub pœna xx. li. & præd. I.S. tunc & ibidem similiter assumpsit pro seipso sub pœna 40. li. consimilis monet' Ang. de bonis & catallis, terris & tenem' eorum & cujuslibet eor' ad opus & usum dicti Dom' Reg' hæred. & succes. suorum fieri & levari si præfat' I.S. defecerit in conditione indorsat'.*

THe condition of this Recognisance is such, that if the within bounden I.S. shall make his personall appearance before the K. Majesties Justices of Peace at the next generall Sessions to be holden for this County, then and there to make answer to our Soveraign Lord the King, for and concerning the suspition of stealing certaine corne, wherewithall he standeth charged, That then, &c.

Alias.

Eastabr. MEmorandum quod *die, &c. venerunt coram nobis, &c. A.B. de &c. & C.D. de &c. & E.F. de &c. & manucep' pro R.B. de I. in comitat' prædict' gener' viz. quilibet eorum corpus pro corpore, quod idem R.B. personaliter comparabit coram præfat' Iustic' & sociis suis Iustic' Dom' Regis ad proximam generalem sessionem pacis in comitat' prædict' tenend. ad stand. recte in cur': (si quis versus eum loqui voluerit) de diversis feloniis & transgr', unde idem R.B. indictatus existit (ut dicitur) & ad respond' dicto Dom' Regi de eisdem prout debet, &c. Vide anteatit.* Bailement, that it must be upon a certaine summe of money. Cromp. 238. 22.H.7.20. Br. Main. 44

Yet note, upon his last manner of Bailement, the mainpernours shall be onely fined, if the Prisoner maketh default. 21.H.7.20. Crom. 153. Br. Main. 44.

Before the statute of *Marl. cap. 27.* if one arrested, or in prison for felony, had beene bailed, and at the day the prisoner would not answer, but hee tooke himselfe to his Clergy, &c. then his mainpernours were amerced, &c. But now by that statute, if they have the body at the day, they shall not be amerced, although the prisoner will not answer, &c. Neither shall they forfeit their Recognisance, if they have the body of the Prisoner there, although the Prisoner will not answer, &c. and yet the words of the Recognisance or Bailement are usually, *Ad respond. dicto Dom' Regi, &c. ut supra.* But these words seeme to be of course.

Alias

Alias, to baile a priſoner for the Peace.

MEmorandum, &c. A.B. de &c. C.D. de &c. & E. F. de &c. venerunt coram me M.D. &c. & manuceperunt pro R. B. de &c. quod ipſe pacem geret erga cunctum populum Domini Regis, & præcipue erga I.S. ſub pœna cujuſlibet manucaptor' xx. li. & prædict' R.B. ſub pœna 40. li. & qd' prædict' R.B. comparabit coram Iuſtic' Domini Regis ad proximam generalem ſeſſionem pacis pro com' prædict' tenend' &c.

The Liberate to deliver a Priſoner committed for felony.

EDward Hinde Knight, and *Edward Aldred* Eſquire, two of the Iuſtices &c. To the Keeper of his Majeſties Gaole in &c. Greeting. Foraſmuch as F.G. &c. Laborer, hath before us found ſufficient mainpriſe to appeare before the Iuſtices of the Gaole delivery, at the next generall Gaole delivery to be holden in the ſaid countie, there to anſwer to ſuch things as ſhall be then, on the behalfe of our ſaid Soveraigne Lord objected againſt him, and namely, to the felonious taking of two ſheepe (for the ſuſpition whereof he was taken and committed to the ſaid Gaole) wee command you on the behalfe of our ſaid Soveraigne Lord, that (if the ſaid F.G. doe remaine in your ſaid Gaole for the ſaid cauſe, and for none other) then you forbeare to grieve or detaine him any longer, but that you deliver him thence, and ſuffer him to goe at large, and that upon the paine that will fall thereon. Given under our Seales, this, &c. Cantabr. Lamb. 342.

Warrant' ad liberand' ſervientem extra Gaolam.

FRanciſcus Brakin Armig' unus Iuſtic' &c. cuſtodi gaolæ dicti Dom. Regis in com' præd' ſalutem. Quia W.C. de N. Laborer, *coram me invenit ſufficient' ſecuritat' eſſendi coram Iuſtic' dict' Dom' Regis ad pacem in com' præd' conſervand. &c. ad proximam generalem ſeſſionem pacis in com' præd' tenend. ad reſpondend' tam dicto Dom' Regi, quam C.D. de &c. de tranſgreſſ. & contemptu ſuis, contra formam ſtatuti de ſervientibus nuper edit. & proviſ. Ideo tibi ex parte dicti Dom' Regis mando qd' præd' W.C. à priſona tua, ſi ea occaſione & non alia ibid' detineat' ſine dilatione delib' fac. Dat. &c.* Crom. 230. Cantabr.

Whereſoever a Iuſtice of Peace, upon his owne motion and diſcretion, hath committed one to the Goale, or houſe of correction, for (want of ſureties for) the peace, or good behaviour; or for being a vagrant or idle perſon, or the like, it ſeemeth the ſame Iuſtice of Peace may in the like diſcretion, afterwards diſcharge him againe, and make his Liberate or Warrant to deliver ſuch priſoner. See 14. H. 6. fo. 8. Br. Impriſ. 27.

To deliver a Priſoner committed for the peace, or good behaviour.

FB. Armig' unus Iuſtic' &c. Vic' (ſeu cuſtodi Gaolæ) &c. Quia I.S. in priſona Dom' Regis in cuſtod' tua exiſt' ad ſectam cujuſd. A.S. de ſe bene gerend', vel pro pace gerend' erga Dom' Regem & cunctum populum ſuum (& præcipue erga prædict' A S.) invenit coram me ſuffic' ſecur. (vel quatuor manucaptores, ſcilicet, A.B. C.D. E.F. & G.H. &c. qui manucep' pro

prædict' I. S. quod ipſe I. S. non inferet, nec inferri procurabit per ſe, nec per alios eidem A.S. ſeu alicui de populo dicti Domini Regis aliquod dampnum ſeu gravamen de corpore ſuo per minas, inſidias, inſultum, ſeu aliquo alio modo, quod in leſionem ſeu perturbat' pacis Domini Regis cedere valeat quoviſmodo, viz. quilibet eorum manucaptor' ſub pœna xx.li. Ideo ex parte dicti Domini Regis tibi mando quod prædict' I. S. in priſona Domini Regis in cuſtodia tua ea occaſione & non alia exiſtent' indilate delib' fac'. Dat' &c.

Releaſes of the Peace. Cap. 128.

The Releaſe of the Iuſtice of Peace.

Ego præfa. H. Martin, *qui ſupra nominatum A.B. ad præd' ſecuritatem pacis inveniend': ex mea diſcretione compuli, eandem ſecuritat' pacis (quantum in me eſt) ex mea diſcretione, 1. die Aug. &c. remiſi & relaxavi. In cujus rei teſtimon' huic præſent' relaxationi meæ ſigillum meum appoſui, Dat. die & anno ſupradictis.*

The Releaſe of the party (before the ſame Iuſtice that tooke it.)

Memorand. quod primo die Aug. &c. præfat. C.D. venit coram me Roger. Thorneton, *& gratis remiſit & relaxavit (quantum in ſe eſt) prædict. ſecuritatem pacis, per ipſum coram me, verſus ſupra nominatum A.B. petitam. In cujus rei teſtimon. ego præfat.* Roger. Thornton *Sigillum meum appoſui. Dat. &c.*

Theſe two former Releaſes are to be written under the Recogniſance it ſelfe: and if the Iuſtice ſhall only ſubſcribe his name to the releaſe, without his ſeale, it is well enough: (eſpecially where the Recog. is without ſeale.)

Or the Releaſe of the party may be by it ſelfe in this forme, *ſcil.*

Cantabr. *Memorand. qd. C. D. de S. in com. præd.* Yeoman, *primo die Auguſti, anno Regni Dom. noſtri, &c. venit coram me* Iſaac Baro *Armig. uno Iuſtic. dicti Dom. Regis ad pacem in com. præd. conſervand aſſign. apud W. in com. Præd. & ib. remiſit, & gratis relaxavit R.W. de S. in com. præd.* Labourer, *ſecuritatem pacis per ipſum C.D. verſus dictum R.W. coram me petitam, Dat. die & anno ſupradictis.*

And if the Releaſe be made before another Iuſtice which tooke not, or hath not the Recogniſance, it may be thus.

Cantabr. *Memorand. qd' A.B. de C. in com. præd* Yeoman, *primo die Auguſti, &c. venit coram me* Rob. Hagar *Armig' uno Iuſtic. dicti Dom. Regis ad pacem in com. præd. conſervand. aſſig. (apud W. in com. præd.) & ſecuritatem pacis quam habet verſus I.S. de, &c. penitus remiſit & relaxavit. Dat. die & anno ſupradictis.*

But note that none of theſe Releaſes will diſcharge the Recog. or the appearance of the party bound thereby, but that hee muſt appeare according to

to the condition of the Recog. for the safegard of his Recog. See *hic* f. 71.

Release for the good abearing.

Lamb. 126. PR. 22.

MR. *Lambert* seemeth to doubt whether the Surety of the good abearing may be released by the partie (because it seemeth more popular than the suretie of the peace:) But others doe hold that it may be released; and then may the formes of such release be easily made by those which are before concerning the peace, using the words *Securitatem de se bene gerendo*, in stead of the words *Securitatem pacis*. But notwithstanding such release, it shall be safe also for the party bound, to appeare according to the Recognizance.

Indentures for Apprentices.

THis Indenture made the day of, &c. witnesseth, that *A.B.C.D.* and *E.F.* Overseers for the poore in the Towne of *H.* in the County of *C.* and *I.S.* Churchwarden of the same Towne, by and with the consent of Sir *I.M.* Knight, and *M.D.* Esquire, two of his Majesties Iustices of Peace for the County of Cambridge, have by these presents, put, placed, and bound *RH.* (being a poore fatherlesse and motherlesse child) as an Apprentice with *R.W.* of *H.* aforesaid Baker, &c. And as an Apprentice with him the said *R.W.* to dwell from the day of the date of these presents, untill the said *I.H.* shall come to be of the age of 24. yeeres, (if it be a woman, then untill her age of 21. yeeres, or the time of her marriage) according to the statute in that behalfe provided. By and during all which time and terme, the said *I.H.* shall the said *R.W.* his Master well and faithfully serve in all such lawfull businesse as the said *I.H.* shall be put unto, according to his power, wit, and abilitie, and honestly and obediently in all things shall behave himselfe towards his said Master, his Wife, and Children, and orderly and honestly towards all the rest of the family of the said *R.W.* And the said *R.W.* for his part promiseth, &c. the said *I.H.* in the craft, mystery, and occupation the which he useth, after the best manner that hee can or may, shall teach and informe, or cause to be taught and informed, as much as thereunto belongeth, or in any wise appertaineth. And also during all the said terme to find unto his said Apprentice, Meate, Drinke, Linnen, Woollen, Hose, Shooes, and all other things needfull or meet for an Apprentice, &c. In witnesse whereof, &c.

Forcible Entry. CAP. 129.

The forme of the Record (of a forcible Entrie) by the Iustice upon his view.

MEmorandum qd. die mensis Ianuar. Anno Regni Domini nostri Caroli, *Quaestus est mihi* Iohanni Cotton *Militi, uno Iusticiar. dicti Domini Regis ad pacem in dicto Comitatu conservand.* assig- Cantabr.

assignat', Quidam A. B. de W. in dicto comitatu, Yeoman, *qd' C. D. de W. prædict. & nonnulli alii pacis dicti Domini Regis perturbatores ignoti, in domum mansionalem ipsius A.B. in W. prædict' manu forti ingressi sunt, & ipsum A.B. disseisiverunt, ac eadem manuforti & armata potentia adhuc tenent: ac proinde petiit à me sibi in hac parte remedium apponi: Quæ quidem querimonia & petitione audita, Ego prædictus* Iohan. Cotton, *immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo adtunc inveni prædictum C.D. & quosdam E.F. & G.H. &c. domum illam vi & armis, manuforti, & armata potentia (viz. arcubus & sagittis, gladiis, pugionibus, galeis & loricis) tenentes, contra formam statuti in Parliamento Domini* Richardi, *nuper Regis Angliæ, secundi, anno Regni sui decimo quinto tento, provisi, & contra formam diversorum aliorum statut. Ac propter ea ego præd.* Iohan. Cotton *prædictos C.D.E.F. & G.H. adtunc & ibidem arrestavi, proximæque gaolæ dicti Dom. Regis apud castrum Cantabr. in dicto comitatu duci feci, ut de dicta manuforti tentione, per visum & recordum meum convictos, ibidem moretur' quousque fines dicto Dom. Regi pro trangress. suis prædictis fecerint. Dat' apud W. prædict' sub sigillo meo, die & anno suprædictis.*

The forme of the Mittimus *(to the Gaole) of such as hold land by force.*

Cantabr. *Iohn Cotton* Knight, one of the Iustices of the Peace of our Soveraigne Lord the Kings Majestie, within his said Countie of Cambridge, to the Keeper of his Majesties Gaole at, &c. in the said County, and to his deputie and deputies there, and to every of them, Greeting. Whereas upon complaint made unto me this present day, by A. B. of Weston in the said Countie Yeoman, I went immediately to the dwelling house of the said A.B. of Weston aforesaid, and there found C. D. E.F. and G.H. of aforesaid, Labourers, forcibly, and with strong hand and armed power, holding the said house, against the peace of our Soveraigne Lord, and against the forme of the statute of Parliament thereof made in the fifteenth yeere of the late King *Richard* the Second. Therefore I send you (by the bringers hereof) the bodies of the said C.D. E. F. and G.H. convicted of the said forcible holding, by mine owne view, testimonie, and record: Commanding you in his Majesties name, to receive them into your said Gaole, and there safely to keepe them, untill such time as they shall make their fines to our said Soveraigne Lord for their said trespasses, and shall be thence delivered by the order of the Law of the Land. Hereof faile you not, upon the perill that may follow thereof. Yeoven at Weston aforesaid, under my Seale, the day and yeere abovesaid.

The forme of a precept (to the Sheriffe) to returne a Iury, for an inquirie.

Cantabr. *Iohannes* Cotton, *Miles, unus Iusticiaror' Domini Regis ad pacem in Comitat' Cantabr' conservand' assig' Vicecomit' ejusdem comitatus, salutem. Ex parte dicti Domini Regis tibi mando & præcipio Quod venire facias coram me apud Balsham in comitat' prædicto, vicesimo die Septem. proximo futur' 24 probos, sufficientes, & legales homines de vicineto de Weston,*

in

in comitat' prædict' quorum quilibet habeat 40. solidor' terrar' & tenementor' vel redd. per annum ad minus ultra reprisas, ad inquirend' super Sacrament' suum pro dicto domino Rege de quodam ingressu manuforti facto in messuag' cujusdam A. B. apud Weston præd. contra formam stat' in Parliam' Dom' Henric' nuper Regis Angliæ sexti, anno regni sui octavo tento editi, ut dicit'. Et videas quod super quemlibet Iuratorum per te in hac parte impanellandorum viginti solidos, de exitibus ad præfat' diem returnes: Et hoc nullatenus omittas sub pœna viginti librar' quam noveris te incursurum, si in executione præmissor' tepidus aut remissus fueris: Et habeas ibi tunc hoc præceptum. Teste me præfat' Iohanne Cotton, *decimo die Martii, anno regni Domini nostri* Iacobi *Dei gratia Angliæ, Scotiæ, Franciæ & Hibernie Regis fidei defensor' &c.*

Note, when the Iustices of Peace are to enquire vpon the stat. of 8. H. 6 (or any other stat.) they may make their precept to the Sheriffe, to return before them Pannels to enquire for the King (generally) of such things as shall be enioyned them on the Kings Majesties behalfe, without saying, to enquire of a forcible Entry, or of a Riot, &c. *Cromp.* 123.

The forme of the Enquiry, Indictment, Presentment, or Verdict of the Jury.

Inquisitio pro Domino Rege cap' apud B. in comitat' prædict' die Iulii, anno regni domini nostri Caroli *Dei gratia Angl' Scotiæ, Franciæ & Hiberniæ fidei Defensor' &c. per sacramentum A. B. C. D. E. F. &c. coram* Iohanne Cotton, *Milit' uno Iusticiar' dicti domini Regis ad pacem in dicto comitat' conservand. Necnon* [a] *ad diversas felonias, trangress. & alia malefacta in eodem comitat' perpetrata audiend' & terminand' assign. Qui dicunt supra sacramentum suum prædictum qd' A. B. de W. prædict'* Yeoman, *diu legitime & pacifice seisitus fuit in dominio suo, ut de feodo de & in uno messuagio, &c. cum pertinentiis in W. prædict' & possessionem ac seisinam suam prædictam sic continuavit quousque C. D. de &c. & alii malefactores ignoti, primo die Septembr' ultimo elapso* ([b] *vi & armis videlicet, cum baculis gladiis, arcubus & sagittis, culhellis, falcastris, lapid', & aliis armis defensivis & invasivis*) *in messuagium prædict' &c. intraverunt, ac ipsum A. B. inde disseisiverunt & manuforti expul', & eundem A. B. sic disseisitum & expulsum ab eodem messuagio, &c. a prædicto primo die, &c. usque ad diem captionis hujus inquisitionis, cum hujusmodi fortitudine & potentia armata extra tenuerunt & adhuc extra tenent, in magnam pacis dict' Dom' regis perturbationem, ac contra formam statuti in Parliament' Domini* Henrici, *nuper Regis Angliæ sexti, Anno regni sui octavo tento, in tali casu editi & provis. Vbi nullus eorum, nec aliquis alius cujus statum ipsi aut aliquis eorum habuerunt, aut habuit, aliquid in eodem messuagio, &c. aut in aliqua inde parcella habuerunt, aut habuit infra tres annos proxim' ante ingressum prædictum, neque alio tempore precedente ad notitiam Iurator' præd.*

a Pur le necessity de ce. part vide hic cap. 134.

b Yet these words *vi & armis*, here seem to be need lesse, being necessarily implied in the word *manuforti*. *Vide ant. tit.* Forcible Entry. This last clause may be omitted.

c And yet it seemeth not best to recite the stat. but shew the forcible entry, &c. & to conclude, *contra formam stat. in Parliamit. &c. Vide post. tit. Indictments.*

Alio modo super Statutum 8. H. 6.

Iurator. pro Domino Rege præsentant, quod cum in statuto in Parliamento Domini Henrici, *nuper Regis Angliæ sexti apud Westmonast. Anno Regni sui octavo tent' edit', inter cætera continentur, Qd si aliquæ persona, sive aliquæ personæ de aliquibus terris aut tenementis manuforti expuls. seu*

seu disseisit' vel pacifice expellatur & postea manuforti extra teneatur vel aliquod feoffement' vel discontinuac' inde post talem ingressum ad jus possessoris defraudandum & tollendum aliquo modo fiat, habeat in hac parte pars gravat' versus talem disseisitor' assisam, vel per actionem transgress. Et si pars gravat' per assisam, vel per actionem transgress. recuperet, vel per verdictum vel aliquo alio modo perdebit' legis forisam inveniatur, quod pars defendans in terris, & tenementis, sic ingressus fuit, vel ea per vim post talem ingressum suum tenuit, recuperet quer' dampna sua ad triplum versus talem defend' & ulterius idem defend. finem & redemptionem dicto domino Regi fecerit, prout in Statut. præd. plenius continetur. Quidam tamen W.W. nuper de W. in com' præd. Husbandman, *& G.D. de eadem* Laborer, *statutum præd. minime ponderant' nec pœnam in eodem statut' content' aliqualiter verentes die Februar' anno Regni Regis* Caroli, &c. *apud C. in com' præd. in unum horreum existent' liberum tenement'* Roberti W. *Decani Ecclesiæ Cathedralis W. manuforti, ac vi & armis, videlicet, gladiis, &c. intraver' & ingressum fecerunt, & præd. Decanum Eccleſiæ præd. a libero tenemento suo manuforti, ac vi & armis præd. inde sine judicio expuler' & disseisiver' & L.P. milit' firmar' Decani præd. Horrei præd. adtunc & ibid. de præd. horreo expulerunt & ejecerunt, & præf. Decanum sic inde expulsum & disseisit' a præd. die Februar. anno supradict' usque diem captionis hujus inquisitionis, de præd. horreo vi & armis præd. & manuforti extra tenuerunt, & adhuc extra tenent, in contemptum dicti domini Regis nunc, & ad grave dampnum ipsius R. & contra pacem dicti domini Regis, & contra formam statuti præd. &c.*

Another, wherein the Statute is not recited.

Inquiratur pro Domino Rege, si A.B. & C.D. nuper de &c. assumptis eis aliis malefactoribus, & pacis Dom' Regis perturbatoribus modo guerrino arraiat' ad numer' xcij. personarum quorum nomina ad præsen. jurat. ignor' x. die &c. apud D. &c. (vi & armis, viz. &c.) in unum messuag' cum pertin' super pacificam possession' M.L. intraver' & dictum M. a possessione sua præd. expul. & disseisiverunt, & eundem M. sic expulsum & disseisitum a præd. messuagio cum pertin' vi & armis præd. ac manuforti extra tenuerunt, & adhuc extra tenent, contra pacem dicti Dom. Regis, ac contra formam statuti Dom. Hen. nuper Reg. Ang. 6. anno Regni sui 8. inde edit' & provis.

Alio modo super statutum, 5. R. 2.

Inquiratur pro Dom. Rege, &c. quod cum in statuto in Parliamento Dom' Richardi *nuper Regis Ang' secundi post conquestum, apud Westm' anno Regni sui quinto tent' edit', inter cætera ordinat' sit, quod nullus faceret ingressum in aliquas terras sive tenement' nisi in casu, ubi ingressus datur per legem, & illo casu non manuforti nec cum multitudine gentium, sed licito & quieto modo tantum; Et si quis in contrarium fecerit, & inde debite convict. fuerit, per imprisonamentum corporis sui puniatur, & finem ad voluntatem Domini regis faciat, prout in eodem stat. inter alia plenius continetur. Quidam tamen T. Hide 1 in comitatu præd.* Yeoman, *& alii, &c. statutum præd. minime ponderant', 2 die Maii, anno Regni Dom.* Caroli, &c. *vi & armis, viz. bocnlis, gladiis, falcibus, & bifurcis in unum clausum I.C. militis jacent' apud in com' præd. in quodam loco ibidem vocat' H. super*

* For such recitall of the stat. see after in the title Indictments.

per

per poſſeſſion' ejuſdem I.C. militis, ubi ingreſſus eis, aut eorum alicui non datur per legem, ingreſſum fecerunt, & cent' pertica ſepium vivar. ipſius I. militis, adtunc & ibid. creſcent' radicaver', evulſerunt, & ſpoliaverunt, in dicti domini regis nunc contemptum, & ad grave dampnum ipſius I.C. militis, & contra formam ſtat. præd. &c.

Note, that upon Indictments, &c. the Jury bee onely charged with the effect of the bill of Indictment, *ſc.* whether the parties be guilty of the Forcible entry (or other fact) or not; And not whether they be guilty, in or under ſuch manner and form as the Indictment or bill ſpecifieth, or not (*ſc.* not whether it were with ſtaves and ſwords, &c. which is but matter of forme, and muſt be kept in every indictment, though the parties had neither ſtaffe, ſword, nor other weapon.) And ſo when the Jury ſay *Billa vera*, they ſay true as they take the effect of the Bill to be. And if there be falſe Latine in the bill of Indictment, and the Jury finde it *Billa vera*, yet their verdict is true, *ſc.* as to the fact, and their verdict ſtretcheth not to the forme of words, but to the effect of the matter, and to the fact, *ſc.* they are to enquire whether there were any ſuch fact done by the parties, or not: And ſo though the bill varie from the day, from the yeere, and from the place, and the Jury finde *Billa vera*, yet they have given a true verdict. Doctor and Student. 162. 163.

And therefore the Juſtices of peace before whom ſuch Indictments of Forcible Entry, or of Riots, &c. ſhall be taken, ſhall doe well to informe the Jury that they are bound to regard the effect of the bill of indictment, or the fact, and not the forme.

The Warrant to the Sheriffe for the making of reſtitution, (if the Juſtice himſelfe will not make it.)

IOhan. Cotton *miles, unus Juſt. &c. aſſignat': Vicecom. ejuſdem comit.* Cantab' *ſalut': Cum per quandam Inquiſition' patriæ coram me apud B. in Comit. præd. 29. die Iulii, &c. ſuper ſacramentum A. B. C. D. E. F. &c. ac per formam ſtatut. de ingreſſibus manuforti, factis in tali caſu proviſi, compert. fuit Quod C. D. &c. & alii, &c. primo die Sept. &c. in quoddam meſuag. &c. A. B. &c. in W. præd. vi & armis ingreſſi ſunt, ac ipſum A. B. inde tunc manuforti diſſeiſiverunt, & expulerunt, & præd. A. B. ſic expulſum à prædict. meſſ. &c. à præd. primo die Sept. &c. uſque ad diem captionis Inquiſitionis præd. manuforti, & cum potentia, extra tenuerunt, prout per Inquiſition' præd. plenius liquet de recordo: Ideo ex parte dicti domin' regis tibi mando & præcipio qd (ad hoc debite requiſitus) una cum poſſe comitatus tui (ſi neceſſe fuerit) accedas ad meſſ. & cætera præmiſſa, ac eadem cum pertin' reſeiſire facias, & præf. A. B. ad & in plenam poſſeſſ. ſuam inde, prout ipſe ante ingreſſ. præd. fuerat ſeiſitus reſtitui, & mitti facias juxta formam dicti ſtat. & hoc nullatenus omittas periculo incumbente. Teſte me præf.* Jo. Cotton, &c.

This warrant to the Sheriffe to make reſtitution, ſhall be under the Teſte of one of the Juſtices onely, as it ſeemeth, *Dyer.* 187.

A Certificate of the preſentment, or verdict of the Jury, into the Kings bench (whereof *vide antea tit. Forcible Entry.*)

A

A Certificate into the Kings Bench, of the Record of a force, viewed by the Juſt. (whereof *vide antea tit. Forcible Entry.*)

These two former Certificates (and the like) may be done and made by the Juſt. of peace, by way of a * letter (as it ſeemeth) incloſing therein the ſaid preſentment of the Jury, or the ſaid record of the Juſt. Except the ſame be removed thither by a *Certiorari*, and then may the Juſt. returne them in ſuch manner as appeareth hereafter, *tit. Certiorari*, with ſome little alteration.

* See the like *hic cap. 46. fine.*

Or the Juſtice of peace may himſelfe deliver into the Kings Bench, ſuch Preſentment found before him; or ſuch Record made by him, and the like, and that without any *Certiorari*: for that hee is a Judge of Record. See *hic cap.* 134.

8. Ed. 4. 12. Br. Cor. 151. Crom. 133.

The forme of the Certificate (or the manner of the Returne) of the writ upon the Statute of Northampton, into the Chancerie.

Upon the Writ it ſelfe theſe words may be indorſed.

The returne *Executio iſtius brevis patet in quadam ſchedula eidem brevi conſuta.*

And the Schedule may be thus.

The Certificate. EGo Johan. Cotton, *miles, unus Cuſtodum pacis Domini regis in com. Cantabr. certifico in cancellariam dict' Domini regis, quod virtute iſtius brevis mihi primò deliberati, decimo die Apr. anno &c. publicè proclamari (ex parte dicti Domini regis) feci, apud B. cujus in dicto brevi fit mentio, prout in dicto brevi præcipitur. Et qd' quidem A. C. & D. E. de B. in com. prad.* Labourers, *prad' proclami parvi pendent', poſt proclamationem prædict' ibid. ſic fact', armati iverunt, ac armat' potentiam ibid duxerunt, ſc. duas galeas, unum arcum & decem ſagittas, duos gladios, & totidem pugiones, in perturbationem pacis dict' dom. Regis, ac terrorem populi ſui, necnon in contemptum ſtat. in dict' brevi ſpecificati manifeſtum. Ac proinde dict' A. C. D. E. una cum armaturis ſuis prad' arreſtavi, & eorum corpora ad prox' priſonam dicti dom. regis in com. prad. duci feci, ibidem moratur' donec aliud à dicto domino rege pro ipſorum deliberatione habuero in mandatis. Armaturas etiam eorum prad' apretiari feci, per A. B. C. D. & E. F. de B. prad.* Yeomen, *ad hoc juratos, qui dicunt ſuper ſacrament' ſuum prad' quod prad' duæ galeæ valent decem ſolid. Et quod dict' arcus & decem ſagit. valent ſex ſolid', Et quod gladii prad. valent viginti ſolid', Et quod dict' pugiones valent quinq. ſolid', & ſic armaturæ prad. valent' in toto quadraginti & unum ſolid', de quibus paratus ſum reſpondere ſecund' tenorem dicti brevis. In cujus rei teſtimonium huic præſent' certificationi meæ ſigillum meum appoſui, dat' apud* prad. *die & anno ſupradictis.*

Jo. Cotton.

A The

The forme of a Certificate to be made by him which ſhall take the oaths of Juſtice of peace, by Commiſſion, or *Dedimus poteſtatem.*

Upon the Commiſſion (or *Dedimus poteſtatem*) indorſe theſe (or the like) words.

Executio iſtius brevis patet in quadam ſchedula huic brevi annexat'.

And the Certificate may be thus.

Ego M. D. in Cancellaria' Dom' regis certifico, me virtute brevis dom' regis, huic ſchedul' annexat' xt. die menſis Decemb' Anno regni dicti dom' regis Iac' Dei gratia regis Ang' &c. 19. & Scotiæ, 55. apud Weſtmratting in com' Cant. Recepiſſe ſacram' Johan' Miliſent milit' (in brevi pred. nominat') tam de officio conſtab. pacis dict' dom' reg' in dict' com' Cant bene & fideliter faciend. juxta formam ſchedul' brevi pred. annex. Quam ſacram' ſpecificat' in alio Parliam' Anno reg' dom' Eliz. nuper regine Ang' prima fact': ſecundum tenor' brevis & ſchedule, brevi pred. ſimiliter annex': & in omnibus prout in pred. brevi precipitur. In cujus rei teſtim', &c. M.D:

Riots. CAP. 130.

The forme of the Record of a Ryot, viewed by the Juſtices, and Sheriffe, or Undersheriffe.

Memorand. qd' viceſimo die Jun'. Anno Regni Domini noſtri Caroli *Dei gratia, &c. Nos* Johan' Cuts *Miles, & Johan' Cage Miles, duo Juſt' dicti dom' regis ad pacem in com' pred. &c. aſſign' &* Williel-mus Wendy *Miles, ad tunc vicecom' ejuſd. com', ad grovem querim' & humilem petition' A.B. de C. in dict' com' Yeoman, in propria perſona noſtra acceſſimus ad domum manſional. ipſius A.B. in C. pred. ad tunc & ibid. invenimus D.E.F.G. & H. I. de C. pred.* Laborers, *ac alios malefactores & pacis dicti dom' regis perturbatores ignotos (ad numerum decem perſon') modo guerrino arraiatos, viz. gladiis, pugionibus, galeis, loricis, arcubus, & ſagit' illicite & riotoſe aggregatos, & eandem domum obſidentes, multa mala in ipſum A.B. comminantes, in magnam pacis dicti dom' regis perturbationem, ac populi ſui terrorem, & contra formam ſtat' in Parliamento dom' Henrici nuper regis Angl' quart' anno regni ſui decimo tertio tento editi & proviſi, ac propterea nos præfat'* Johannes Cuts, Johannes Cage, & Willielmus Wendy, *pred. D.E.F.G. H.I. &c. tunc & ib. arreſtari, ac prox' goale dicti dom' regis in com' pred. duci fecimus, per viſum & recordum noſtrum de illicita congregatione & riota pred. convictos, ibid. moraturos quouſque finem dicto dom' regi proinde fecerint. In cujus rei teſtim' huic preſent' recordo noſtro ſigilla noſtra apposuimus, Dat' apud C. pred. die & anno primo ſuprad'.*

Cantab.

Lamb. 311. And if a man be ſlaine or maimed, or a reſcous bee done to the officer by the Ryotters, then the Record ought to bee *riotoſe occiderunt*, or *riotoſe mahimaverunt*, or *riotoſe reſcuſſerunt*, but not *felonice*, nor ſimply *reſcuſſerunt*

reſcuſſerunt, because their authority is in this caſe reſtrained to the riot only: ſo as notwithſtanding that record, the parties may plead, Not guilty, to the felony, or to the reſcous, howſoever for the ryot they are eſtopped.

Mittimus. The *Mittimus*, for conveying the ryoters to the gaole, may (with ſome few words of change) bee made out of that, which is here before, for ſuch as hold by force. See hereof *paulo ante*, amongſt the *Preſidents*, in *Forcible. Entry.*

The Precept (to the Sheriffe) to returne a Jury, for an Inquiry upon a Riot.

Cantabr. IOhannes Cutts, *Miles*, & Johannes Cage, *Miles*, *duo Iuſtic' &c aſſignat'*; *vicecomit' ejuſdem comitatus ſalutem. Ex parte dicti domini Regis tibi præcipimus, quod venire facias coram nobis apud I. in comitatu prædicto die Ianuar' prox. futuro 24. probos, ſuffic' & legal' homines de comitatu prædicto, quorum quilibet habeat terras & tenementa, infra dict' com', liberi tenementi per chartam, ad annuum valorem viginti ſolidor', aut per copiam Rotul' Curiæ ad annuum valorem viginti ſex ſolid' & octo denarior' aut per utrumque ultra omnes reprisas; ad inquirendum pro dicto Domino rege, ac pro indemnitate noſtra in hac parte, ſuper ſacrament' ſuum de quibuſdam illicitis aggregationibus & riottis apud C. in comitat' prædict' nuper commiſſis ut dicitur. Et hoc nullatenus omittas ſub pœna viginti librar', quam incurſurus es, ſi in executione præmiſſor' defeceris. Et habeas ibi tunc nomina Iuratorum prædictorum, & hoc præceptum. Dat' ſub ſigillis noſtris die Ianuarii, anno regni dict' domini noſtri* Caroli, &c.

The forme of the Inquiry, Indictment, or Preſentment of the Jury.

Cantabr. INquiſitio pro dom' rege, &c. (as before in Forcible Entries) *coram* Johanne Cutts, *milite*, & Johanne Cage *milite*, *duo Iuſt' &c. Qui ad hoc jurati & onerati, dicunt ſuper ſacrament' ſuum præd' Quod D. E. F. G. & H. I. de S. in com' præd.* Laborers, *ſimul cum aliis malefactoribus & pacis dict' dom' reg' perturbatoribus ignotis (ad numerum ſept' perſon') modo guerrino arrayat', vi & armis, viz. hamberdis, gladiis, arcubus & ſagit', die menſis Ian' ultim' prætrito apud C. in comitatu prædicto, inter horas octavam & nonam poſt meridiem ejuſdem diei, domum manſionalem A. B. de C. prædict' Yeoman, ſcituat' in C. præd' riotoſe fregerunt & intrav', & in ipſum A. B. tunc* *Aſſault.* *& ibid' inſultum fecerunt, ipſum tunc & ib' verberaverunt, vulneraverunt, & indignis modis tractav', Ita quod de vita ejus deſperabatur, in magnam pacis dict' dom' Reg' perturbationem, & pop' terrorem, & contra formam ſtat' de riottis, gentis, & congregat' gentium illicitis in Parliam' Dom' Hen. nuper regis Ang' quarti, an. regni ſui decimo tertio tento proviſi & editi.*

Note that all indictments of Riots, or Forcible entries, &c. taken before Juſtices of Peace muſt be after this forme, *ſc. Inquiſitio, &c. excapta, &c. coram I. C. & R. T. &c.* (if out of the Seſſions; or if at the Seſſions, then *Coram I. C. & ſociis ſuis*) *Iuſtic' Dom' Regis ad pacem in dicto Comitatu conſervand. Necnon ad diverſas felonias, &c. Qui, &c, ut hic in* Forcible Entries. *Vide etiam hic cap. 134. ſine.*

Inquiſitio

Alias.

INquiſitio', &c. qui dicunt, &c. Q^d A.R.C.D. & E.F. de &c. aggregat' eis quampluribus aliis malefactoribus, & pacis dom' regis perturbator' ignotis ad numer' ſex perſon' modo guerrino arraiat' per inſtigationem & procurationem I.S. 3. die Sept' anno &c. vi & armis, viz. gladiis, baculis, & aliis arm' tam invaſivis quam defenſivis apud Ab. Mag' in com' Cant' z injuſte, riotoſe, & routoſe aſſemblaverunt, clauſumque W.H. milit' apud A. prad. adtunc & ib' injuſte fregerunt & intraver' & decem pertic' ſepium vivar' ipſius W.H. militis adtunc & ibid. creſcent' eradicaver', evulſerunt & ſpoliaverunt, ad grave dampnum ipſius W.H. Ac contra pacem dict' dom' regis & contra formam diverſor' ſtat' in hujuſmodi caſu editor' & proviſor.

Quicke hedges deſtroyed.

Alias.

CLauſum Willihelmi H. (*apud* F. or *vocat'*, &c.) *infra paroch' de Ab. magna in com' prad. riotoſe fregerunt & intrav' ac ſepes & clauſum prad. W.H. ad numerum ſex cent' ped. adtunc & ib' exiſtent' lacerave-runt, irruper' & proſtraver' ad grave dampnum, &c. Ac contra pacem, &c.*

Hedges cut or pulled up.

Alias.

AC foſſ. ibid. exiſtent' adtunc & ibid. cum ligonibus, & bipellis foderunt, planaverunt & implerunt, ad grave dampnum, &c.

Ditches caſt down.

Alias.

CLauſum, &c. injuſte freger' & intraver' & ſex acras tritici adtunc & ib' creſcent' valoris, &c. de bonis & catallis W.H. prad. adtunc & ibid. invent' injuſte, riotoſe, & routoſe meſſuerunt, falcaverunt, & aſportaverunt, ad grave dampnum, &c.

Cutting & carrying corne.

Alias.

QVoddam clauſum vocat' &c. cujuſd. R.T. armig' freger' & intraver' ac herbas ipſius R.T. adtunc & ib' creſcent' cum quibuſd. averiis non ſolum depaſt' fuer' conculcaver' & conſumpſer. Sed etiam prad. clauſum cum equis & aratro araver' & ſubvert' Ad grave dampnum, &c.

Treſpaſſe &c.

Alias.

DOmum cujuſd. I.S. apud &c. freger' & intrav' ac bona & catal. prad. I.S. ad valent' x.li. in domo ſua prad. adtunc invent' riotoſe ceperunt, ſpoliaver' & aſportaver' ac ciſtas ipſius I.S. in domo ſua prad. tunc exiſtent' riotoſe freger' & ſex coclear' argent' ad valent' 40.s. de bonis & catal' ipſius I. adtunc & ibid. invent riotoſe ceper' & aſportaver' ac hordeum ipſius I.S. tunc & ibid. in horreo ſuo invent riotoſe ceper' & ſpoliaver' & aſportaver' Ad grave dampnum, &c.

Houſe broken, and goods taken away.

As for the Certificate (which ought to bee made to the King, and the Councell, in caſe that by this inquiry, the truth of the faule, and Ryot bee not found) ſuch Certificate may be done in Engliſh, by way of a letter, comprehending the truth of the whole matter, with the cer- *Certificat.*

tainty of the time, place, and other circumſtances of the fact or ryot, together with the certainty of the names of the Rioters; as alſo of the names of ſuch, who by maintenance, embracery, or otherwiſe, were any impediment to the finding thereof, with their ſeverall miſdemeanors: which Certificate or letter is to be directed and ſent by the ſaid Juſtices of peace and Sheriffe, or Underſheriffe, into the Starre-Chamber, or Kings Bench, &c. within one moneth. See *antea tit. Ryots.* Br. Prem. 1.

A Traverſe to an Indictment of a Riot, and the Record thereupon.

Cantabr. *Alias, ſc. ad Seſſionem pacis tentam apud Caſtrum Cantabr. in com' præd. die Martis proxim' ante Feſtum Sancti Matthæi Apoſtoli, anno regni Domini noſtri* Caroli *Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ regis fidei Defenſor', &c. coram & aliis ſociis ſuis Iuſticiar' dict' Domini regis ad pacem in comitat' prædict' conſervand. necnon ad diverſ. felon' tranſgr', & alia malefacta in eod. com' perpetrata audiend. & terminand. aſſign': per ſacramentum duodecim Iurator' extitit præſentatum quod I. L. de &c. R. M. de &c. & T. L. de &c. cum diverſis aliis ignotis malefact' & pacis dicti Domini regis perturbatoribus, modo guetrino arrayato, uniti & aſſemblati viceſimo die Iulii in noct' ejuſdem diei, anni &c. vi & armis, viz. baculis, gladiis, clypeis, pugionibus, falcaſtris, & aliis armis, tam invaſivis, quam defenſivis, apud C. &c riotoſe, & routoſe, fregerunt & intraverunt, & octo planſtra fœni ad valent' &c. adtunc & ibid. exiſtent' de bonis & catallis dicti adtunc & ibid. injuſte & illicite ceperunt & aſportaver' contra pacem dicti dom' regis, &c. Et contra formam ſtat' inde editi & proviſi per quod præcept' fuit vic' Com', quod non omitteret, &c. quin venire faceret eos ad reſpondend, &c. poſteaq; ſc. præd. die Martis prox' ante feſtum ſanct' Matthæi Apoſtoli anno ſupradicto coram præf. Iuſtic' venerunt præd. I. L. R. M. & T. L. in propriis perſonis ſuis, & habito audito indilli amenti præd. ſeparat' dicunt quod ipſi non ſunt inde culpab' & de hoc ponunt ſe ſuper patriam. Et A. M. qui pro dom' rege in hac parte ſequitur ſimilit. &c. Ideo veniat inde jurata coram Iuſtic' dict' dom' regis ad pacem in com' præd. conſervand. aſſign. &c. ad Seſſionem pacis apud &c. die Martis prox' poſt Epiphaniam dom' tunc prox' futuro tenend. Et qui, &c. ad recogn', &c. quia tam &c. idem dies datus eſt tam præf. A. M. qui ſequitur, &c. quam præf. I. L. R. M. & T. L. &c. ad quos quidem ſeſſiones, tent. apud præd. in com' præd. die, &c. coram Dom' T. P. G. N. & H. P. milit' & ſociis ſuis Iuſtic' dicti dom' regis ad pacem in com' præd' conſervand'. Necnon ad diverſ. felon' tranſgr' & alia malefacta in eod. com' perpetrata audienda & terminand. aſſignat', venerunt tam præf. A. M. qui ſequitur &c quam præfati I. L. R. M. & T. L. in propriis perſonis ſuis, Et Iurator' præd. per vicecom' com' prædict' ad hoc impannellati & exacti, viz. I. F. I. G. &c. ſimiliter venerunt, qui ad veritatem de præmiſſ. dicendam triati & jurati, dicunt ſuper ſacramentum ſuum, qd' præd. I. L. R. M. & T. L. culpabiles ſunt; & eorum quilibet culpabilis eſt de tranſgreſſ. contemptu, & riotto prædictis in indictamento prædict' ſuperius ſpecificatis, modo & forma prout ſuperius verſ. eos ſupponitur, Ideo conceſſum eſt per Curiam qd' præd. I. L.*

The ſtile of the ſeſſions.

The Indictments.

Proceſſe ad reſpondend.

Traverſe, Iury.

Day given.

The verdict.

The judgment. cap. pro fine.

I. L. R. M. & T. L. capiantur ad ſatisfaciend' dict' Dom. Regi de finibus ſuis occaſione tranſgreſſ. contemptus & rioti præd'. Qui quidem I. L. R. M. & T. L. adtunc & ibid' præſent' in cur' petierunt ſe ad finem cum dict' Dom. Rege occaſione præd' admitti. Et inde ponunt ſe ſeparatim in miſericord' Dom' Regis & aſſeſſatur finis ejuſdem I. L. per Iuſtic' præd', ad ires lib. ſex ſolid', octo denar'; Et finis ejuſdem R. M. aſſeſſatur ad vigint' ſolid', Et aſſeſſatur finis ejuſdem T. L. ad quinque libr', bone & legalis monete Anglie, Ad opus & uſum dicti Domini Regis.

Ponunt ſe in miſericordiam Regis.

Fine aſſeſſed.

I have inſerted this former Preſident, for that it diſcovereth much matter worthy the Juſtices obſervation.

Indictments. CAP. 131.

FOr the forme of indictments', in caſes of Forcible Entry and Riots, I have here before ſet you downe certaine Preſidents; nevertheleſſe for that theſe indictments be the chiefe foundation whereupon the whole buſineſſe and triall is after to be grounded and built, I thought it not amiſſe to obſerve here theſe few generall rules, as well concerning the matter, as the forme, of theſe, and all other indictments or preſentments, to be taken before Juſtices of peace.

Firſt, in theſe indictments of Forcible Entry, & Ryots (as alſo in all other indictments of felony or Treſpaſſe) it is good to ſay *contra pacem*, or other words to that effect.

Lamb. 484. 17. H. 8. c. 8. Alſo theſe words, *vi & armis, viz. gladiis, &c.* are not of neceſſitie, yet it is good to uſe them, eſpecially if the circumſtances of the fact do require them; for theſe circumſtances do either aggravate or diminiſh the offence. *Stamf.* 94.

But theſe words, *vi & armis &c.* are needleſſe in an indictment of Forcible Entry, becauſe they are implied in the word Force.

Yet note that in all indictments of Treaſon, Murder, Felony, or Treſpaſſes, theſe words, *vi & armis*, are neceſſarie to be put in: (Otherwiſe it ſeemeth of offences which are *Contra pacem tantum*, as Conſpiracies, Deceits, Slanders, eſcapes for Debt, and the like.) *Finch.*

Co. 4. 48. Alſo in indictments found upon ſtatutes, it is not needfull, nay, it is not ſafe to recite the ſtatute at all: for as the recitall is not neceſſarie; ſo the miſrecitall thereof in the matter, or in the yeare, day, or place, is fatall to the indictment, and maketh it void: But it is ſafe and ſure to draw the indictment with this concluſion, *ſcz.*

Br. Parliament. 89. Co. 4. 48. Dyer 363. *Contra formam ſtatuti in hujuſmodi caſu proviſi ac editi*, If the indictment be founded upon one ſtatute: or, *contra formam diverſorum ſtatutorum in hujuſmodi caſu edit. & proviſor'*, without naming any ſpecial ſtatute, where many ſtat. doe concerne one offence. *Cromp.* 104.

Plo. 1. & 79. Yet the offence againſt the ſtat. muſt be certainly deſcribed in the indictment, and the Subſtance, and materiall words in ſuch ſtatute muſt be fully ſet downe therein. *Plow.* 1. & 79. *Lamb.* 485. *Co. L.* 98. *b.*

Alſo all indictments and preſentments (being in the nature of declarations for the King againſt the offenders) ought to containe certaintie, & ſhall not be ſupplied or maintained by implication, intendment, or argument, *Co.* 5. 120. *Plo.* 84. 122. and therefore ſixe principall things bee moſt commonly requiſite in all preſentments before the Juſtice of peace, *viz.* Lamb.469. &c. Br. Indictment, 6. 24. 34. 46. & 47. Stamf. 96.

1 The names, and ſirnames as well of the parties indicted, as of the parties offended, with the addition of the degree or myſtery, and the dwelling place of the partie indicted, (*ſc.* both the Towne, and County.)

Yet in ſome caſes, an indictment, *quod procuravit perſonas ignotas*, or *quod bona cujuſdam ignoti cepit*, *&c.* or the like, may be good. See *plus Lamb.* 470. 476. *Br. Inditement* 6. 10. 11. *Dyer.* 99. & *Plo. fol.* 85, *b.*

2 The time, *ſc.* the day and yeare when the offence was done.

3 The place, *ſc.* the towne, and County, where it was done, as at B. in the County of C. Br Indictment. 24. 41. 42. Lamb. 478.

4 The name or qualitie of the thing, in which the offence is committed; *viz.* of dead things, it may be, *bona & catalla*, expreſſing them certainly: of live things, *equum, bovem, ovem &c.* but not *bona & catalla*. So of entry, &c. into lands, &c. to expreſſe certainely, whether it bee a houſe, land, meadow, paſture, wood, &c.

5 Alſo the value or price of the thing is commonly to be ſet downe, to aggravate the fault.

6 The manner of the fact, *ſc.* the manner, and nature of the felony, or treſpaſſe. See *Lam.* 480. *Br. Indict.* 7. 36. Lamb. 480.

And yet for the forme of Indictments, the Jury are not ſtrictly tyed thereunto (*ſc.* to the day, yeare or place, &c.) but chiefely to the matter of fact. *Vide hic cap.* 129.

Verity. Alſo indictments ought to be framed ſo neere the truth as may be, and the rather, for that they are to be found by the Jury upon their oaths. *Co.* 9. 119. *Plo.* 84.

Yea, an indictment, being *veredictum, id eſt, dictum veritatis*, and a matter of record, ought to ſet forth all the truth, that by law is requiſite; for *de non apparentibus, & non exiſtentibus eadem ratio:* And every part of the indictment materiall ought to be found by the oath of the Jurors, and is not to be ſupplied by averment; otherwiſe the indictment will bee inſufficient. Co. 4. 47.

But falſe Latin ſhall not make void an indictment. *Co.* 5. 121.

And to this purpoſe note, that falſe Latin may be ſaid to be of three ſorts.

Firſt, words of Art, being words ſignificant allowed by our Law, and knowne to the Sages of the Law, although not allowed by the Grammarians, nor having the countenance of Latin: As *Meſſuagium, Toftum, gardin', bruera, murdred, burglariter, felonice, &c.* theſe and the like are words of Art, and are allowed in our Law, yea the Civilians and Phyſitians doe uſe the like: And every ſcience have their *vocabula artis.*

The ſecond ſort are falſe writing or incongrue Latine, as *viginti* for *viginti*,

viginti, *ſeptimginti* for *ſeptinginta*, *prefato* for *prædicto*, &c. theſe two former ſorts ſhall not avoyde, or make voyde any Enditement, Grant or Deede.

The third ſort are words inſenſible, eſpecially if the words of art are written inſenſibly or falſly, as *murdredum* for *murdrum*, *burgariter* for *burglariter*, *feloniter* for *felonicè*: Theſe words *murdredum*, *burgariter*, & *feloniter* (being no Latine words, nor allowed by Law as words of art) if they ſhall be in any place or point materiall, they doe make void the indirement: except where ſuch words inſenſible be ſurpluſage. See *Co.* 4. 39. 42. & 5. 121. & 10. 133.

And yet *quære*, for theſe words have the countenance of thoſe other words of art, & doe ſhew to the court ſufficiently what is thereby meant, and ſeeme to be onely the falſe writing of the Clerkes, & therefore might be amended in caſe of an Enditement. See *Cok.* 133.

Proceſſe. Cap. 132.

The formes of Proceſſe (upon Inditements of Treſpaſſe) which alſo the Iuſtices of Peace out of their Seſſions may in ſome few caſes make out againſt offenders.

NOte, that as the authoritie of making proceſſe upon Indictments, is given by expreſſe words in the Commiſſion, to the Juſtices of peace in their ſeſſions; ſo is it given by expreſſe words, in ſome ſtatutes, to the Juſtices of peace, (yea to one Juſtice of peace) out of their Seſſions to make out proces, upon Indictments found (before them) againſt offenders; or upon information againſt them, as if they were indited of Treſpaſſe in Seſſions, as you may ſee here: *tit. Forcible Entry, & tit. Sheriffs, antea.*

Lim. 317. 501. Alſo in ſome other caſes, and by ſome other ſtatute this authoritie of making out Proceſſe (againſt offenders) by the Juſtices of P. out of their Seſſions, ſeemeth to bee implyed of congrueſce, or rather of neceſſitie; as where any ſtatute doth give power or authoritie to the Juſtices or Juſtice of peace, out of their Seſſions, to enquire, heare, and determine (as *hic tit. Ryots, tit. Tranſportation it. Tyle. & tit. Weights.*) In theſe, and in all other ſuch caſes, where the Juſtices may enquire, heare, and determine, there, after indictment or preſentment of the offence, the ſaid Juſtices may make out proceſſe againſt ſuch offenders, to cauſe the offenders to come and anſwer; for unleſſe the offenders doe come in, either *gratis*, or by proceſſe, the Juſtices cannot proceede to heare and determine. Againe, in the former caſes of tranſporation, Tyle, and Weight, as alſo in all other caſes, where any Statute doth give power to the Juſtices of peace out of their Seſſions, to heare and determine, either upon the confeſſion of the offenders, or upon examination of the witneſſes, (whereof ſee *antea, tit. Heare and determine, &c. cap.* 66.) In all ſuch caſes, it ſeemeth the Juſtices of peace may grant out their Proceſſe or Warrant againſt ſuch offenders, to appeare before them, to anſwer to their ſaid offences: And thereupon

may

may proceed to examine, heare, & determine the offence, as being convict thereof upon ſuch confeſſion or examination, without any Indictment or proceſſe.

The difference betweene proceſſe, and the precept or warrant of the Juſtices of peace, ſeemes to be this:

The precept or warrant of the Juſtice is only to attach and convent the party before any indictment or conviction, and may be made, either in the name of the King, or of the Juſtice, as is before ſhewed.

Proceſſe is alwayes in the name of the King, and uſually after an Inditement found, or after other conviction.

Now theſe Proceſſe ſeeme to be as followeth.

1. Venire fac. FIrſt, if the offender be abſent, a *Venire facias* ſhall be awarded by the Juſtice or Juſtices of peace under his or their owne *Teſte*: And if thereupon the offender be returned ſufficient (and maketh a default)

2. Diſtrin. gas, or Capias. then a *Diſtringas* is awarded, which *Diſtringas* ſhall goe forth *infinitè*, till the offender come in: But if a *Nihil habet*, &c. be at the firſt returned, then after the *Venire facias*, a *Capias*; then an *alias*. and after a *Pluries* ſhall goe forth, and after that an *Exigent*, till the party be taken, or yeeld himſelfe, or elſe be outlawed.

And theſe are the ordinary Proceſſe upon all indictments of Treſpaſſe againſt the peace, or of other offences againſt penall Statutes, not being felony, or a greater offence, (if it be not otherwiſe ordained by ſtatute.) But this proceſſe is commonly grounded upon an indictment, and is onely to cauſe the offender to come in, and to make his anſwer; and therefore if the offender be preſent, and confeſſe ſuch indictment, information, or offence, then needeth there no proceſſe at all, for he ſhall be forthwith committed to priſon (commonly) there to remaine untill he hath paid his fine, or given ſureties for it. 1. *H.* 7. 20. & *Br. Imp.* 100.

Alſo theſe proceſſe ſhall be alwayes directed to the Sheriffe (who is the immediate miniſter and officer of the King, to execute all proces) except the Sheriffe himſelfe, or his officers be parties: but if the Juſtice of peace be to grant out proceſſe againſt the Sheriffe, Under-Sheriffe, or their officers, offending contrary to the ſtat. 8. *H.* 6. *cap.* 9. or 11. *H.* 7. *cap.* 15. which you may ſee here before, it ſeemeth ſuch proceſſe ſhall be directed to the Coroners of the county, and ſhall be ſerved by them; and ſo are divers bookes, as 2. *H.* 6. 12. 8. *H.* 6. 30. 9. *H.* 6. 11. & 18. *Ed.* 4. 7. and others, And ſo alſo the oath of the Juſt. of P. ſeemeth to bind them.

Note alſo, that this proces ought alwayes to be made in the name of the King: and for that the King is a partie, it muſt alſo be with a *Non omittas propter aliquam libertatem &c.* But the *teſte* thereof may be under the name of the Juſtice of peace. Br. Franch. 18.

If the offender be within any liberty or franchiſe, the Sheriffe is to enter the Franchiſe, and to execute the proceſſe himſelfe, (and not to write to the Bayliffe of the Franchiſe, becauſe the King is a partie,) See 41. *Aſſ.* 17. *Br. Franch* 18. 31.

The formes of theſe proceſſe, to be made by the Juſtice of peace, out of the Seſſions, ſeeme to be as followeth.

The

The *Venire facias* thus.

CArolus *Dei gratia Angliæ, Scotiæ, Franciæ, & Hibern' Rex, fidei defenſor, &c. vic' com' Cantabr' ſalutem. Præcipimus tibi, qd' non omittas propter aliquam libertat' in balliva tua, quin venire fac' A.B. de C. in dicto com. tuo* Yeoman, *coram R.M. milite & M.D. armig' duobus Juſtic' noſtr' ad pacem conſervand. Necnon ad diverſ. felonias, tranſgreſſ. & alia malefacta in dicto com' perpetrata audiend. & terminand. aſſignatis, apud Lynton in com' tuo die Maii prox' futur' ad reſpondend. nobis ſuper quibuſdam articulis ſuper ipſum A.B. præſentatis, & habeas tibi tunc hoc præceptum. Teſte R. M. & M.D. apud Lynton die, &c.*

The *Diſtringas* thus.

CArolus *Dei gratia Angliæ, Scotiæ, Franciæ, & Hibern' Rex, fidei defenſor, &c. vic' com' Cantab' ſalutem. Præcipimus tibi qd' non omittas propter aliquam libertat' in balliva tua, quin tum ingrediaris & diſtringas A.B. de C. in com' tuo* Yeoman, *per omnia terras & tenement', &c. Et quod de exitibus eorum reſpondeas, &c. Et quod habeas corpus ejus coram &c. Juſtic. &c. ad reſpondend. &c. Teſte, &c.*

The Writ of *Capias* thus.

CArolus *Dei gratia Angliæ, &c. vic' Cant' ſalutem. Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin eum* Yeoman, *&c. ſi inventus fuerit in balliva tua, & eum ſalvo cuſtodias fac'. Ita quod habeas corpus ejus coram R.M. milite, & M.D. armig' duobus Juſtic' noſtris ad pacem conſervand. Necnon ad diverſ. felonias, tranſgr' & alia malefacta in eodem com' tuo perpetrat' audiend. & terminand. aſſign' apud Lynn com' tuo die Martis prox' futur' ad reſpondend. nobis de diverſ. tranſg' contempt' & offenſis de quibus ipſe indictat' exiſtit: Et habeas tibi tunc hoc breve, Teſte R. M. & M.D. apud Lynton ſexto die Ia. &c. anno regni noſtri, &c.*

Ad quem diem Willielmus Wendy, *miles, vic' com' pred. retorn' quod ipſe non eſt inventus in balliva ſua, & ipſe non venit, Ideo præceptum eſt ſicut alias, &c.*

The *Capias alias.*

CArolus, *&c. vic' &c. Præcipimus tibi ſicut alias tibi præcipimus, qd' non omittas, &c. verbatim ut ſupra.*

Ad quem diem, &c. ut ſupra, & ipſe non venit, Ideo præcept' eſt vic' ſicut pluries, &c.

The party may appeare *gratis*, and ſo avoid the attachment or arreſting of his body; and that is the cauſe that the Entry is made, *& ipſe non venit.*

The

The *Pluries Capias.*

CArolus, *&c. vic' &c. ſalutem, præcipimus tibi ſicut plur' tibi præcepimus, quod non omittas, &c. ut ſupra.*

Ad quem diem Willielmus Wendy *miles, vicecom' præd. retorn', quod præd. C. D. non eſt inventus in, &c. & ipſe non venit, Ideo præcept' eſt' qd exigi facim, &c.*

The exigent.

CArolus, *&c. vic', &c. ſalutem, præcipimus quod exigi fac' C. D. de A. in comitat' tuo* Yeoman, *quouſque ſecundum legem & conſuetudinem regni noſtri Ang' utlagatur ſi non comparuerit, & ſi compar', tunc eum capias & ſalvo cuſtodir' fac', Et quod habeas corpus ejus coram R. M. milite, & M. D. duobus Juſtic' ad pacem noſtram conſervand. Necnon ad diverſ' felon' tranſgr' & alia malefacta in eadem com' tuo perpetrat' audiend. & terminand. aſſignat' apud L. in com' tuo die Sept' prox' futur' ad reſpond. nobis de diverſis tranſgr' contempt' & offenciis de quibus ipſe indictatus exiſtit, & habeas ibi tunc hoc breve, teſte R. M. & M. D. apud L. octavo die Septem' anno regni noſtri, &c.*

Ad quem diem Willielmus Wendy *miles, vic' com' præd. retorn' qd' ad com' tentum apud Cantabr' die anno regni dom' regis nunc, &c Et ſic ad quatuor dias com' tunc prox' ſequent' ibid. tent' præd C. D. exactus fuit, & non comparuit, Ideo utlagat' fuit,*

The ſe Proceſſe is ſent out, to the end, that either the party ſhall come Lamb. 505. or be brought in to make his anſwer, and to be juſtified by the law, or elſe that (for his contumacy) he ſhall be outlawed, and ſo to be deprived of the benefit of law: but the power of the Juſtice of peace endeth with the utlary, for they can make no *Capias Utlagatum*; but muſt certifie the utlary into the Kings Bench.

Alſo all ſuch Proceſſe (as well of *Capias*, &c. as of utlary) may be ſtay- Lamb. 508. ed by a *Superſedeas* iſſuing from other Juſtices of peace (out of Seſſions) teſtifying that the party hath come before them, and hath found ſureties for his appearance to anſwer to the Indictment, or to pay his fine, &c. See before.

Note that this authority of the Juſtices of peace, in ſending out theſe proceſſes (being out of their Seſſions) is beyond the bounds of their commiſſion. And again, by the Commiſſion, one Juſtice of peace alone cannot grant a *Capias*, nor other Proceſſe, but two Juſtices peace at the leaſt muſt doe it, and that ſitting the Court, and in their Seſſions; and yet nevertheleſſe, in theſe former caſes, the Statutes (expreſly, or by neceſſary implication) giving ſuch authority to the Juſtices of peace, or to one Juſtice alone, and that out of the Seſſions, are a ſufficient warrant and Commiſſion to the Juſtice of peace therein, as it ſeemeth. The commiſſion. 14. H. 7. 8. Peace 15.

Traverse. Cap. 133.

Lamb. 523. AFter that such processe (or other processe *ad respond'*) be awarded against the party, it seemes he may come in and yeeld himselfe to pay his fine; or else he may offer his Traverse to the indictment found against him before the Justices of peace, & the Justices ought to allow him his Traverse against it; which Traverse is to take issue upon the chiefe matter of the indictment, or to deny the point of the indictment.

But although the Justices of Peace have power in some cases as aforesaid (out of their generall Sessions) to take indictments, and after such indictment found to award Processe *ad respondendum* against offenders, and to heare and determine thereof, and the offenders also have liberty to come in, and to speake, and may answere for themselves, and may offer their Traverse, and that the Justices of Peace are to allow of, and to receive the same; yet *quere* whether the Justices of Peace (out of their generall Sessions) may try such Traverse being tendred to them, without which triall all the rest may seeme idle (*vide hic cap. 84. fine.*) Or that upon the Traverse tendred, they must certifie or send the inquisition or indictment so found before them into the Kings Bench, or into their Quarter or generall Sessions of the Peace, there to be tried and determined: howsoever it is safest (after such traverse tendred) to certifie, or deliver such inquisition or indictment into the Kings Bench, or to their next quarter Sessions, and so to referre the tryall of the Traverse, and further proceedings therein to them. See hereof *tit. Ryot*, and *Forcible Entry*.

Certiorari. Cap. 134.

The returne of a Certiorari, *sent to remove an Indictment, may be thus.*

FIrst, upon the backside of the writ of *Certiorari*, indorse these, or the like words.

Executio istius brevis patet in quadam schedula eidem brevi annexa.

And that Schedule may be thus.

EGo Michael Dalton, *unus custodum pacis, ac Justiciar' dom' Regis, ad pacem in dict' Com' Cantabr' conservand. meumq; ad diversa felonias, transgr' & alia malefacta in eodem Com' perpetrata audiend. & terminand. assignator', virtute istius brevis mihi deliberati indictamentum illud (unde in dicto brevi fit mentio) una cum omnibus idem indictamentum tangentibus, in Cancellar' dicti domini regis, distincte & aperte sub sigillo meo certifico. In cujus rei testimonium ego pred. M. D. his præsentibus sigillum meum apposui. Datum apud W. die mensis Anno regni, &c.*

Then

Then take the record of the indictment, and close it within the Schedule, and seale, and send them up both together with the *Certiorari.*

Now to shew what is further meet for the Iust. of peace to know, concerning this writ of *Certiorari*, and their certifying or Returne thereof.

After an Indictment found before Iustices of Peace, a *Certiorari* is procured by the meanes of some party indicted or grieved, thereby to remove such indictment from the said Iustice, and to conveigh it to Iustices of a higher authority, to the end the party may either traverse such indictment above, or may there avoid it for insufficiency of forme or matter.

And this *Certiorari* is the Kings writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any Court of Record, or officer of Record (as to a Iustice of peace, Sheriffe, Coroner, or Escheator) to be certified of any Record, which is before any of them: and first an *Alias*, then a *Plur'*, and lastly an *Attachment* lieth against them that should send it (if the record be not certified accordingly) or it seemeth a *Subpœna* is used at this day. Fitz. 245. a

If it be returnable into the Chancery, then are the words, *In Cancellaria nostra*, and if into the Kings Bench, then the words are, *Nobis mittatis*, and if into the Court of Common Pleas, then *Coram Iusticiariis nostris de Banco.*

The *Certiorari* may be sometimes to remove and send up the Record it selfe, and sometimes but onely the Tenour of the Record (as the words therein be) and it must be obeyed accordingly. Fitz. 245. b

If there be variance between the *Certiorari* and the Record which is to be removed, the Iustices need not to certifie such Record, *Lam.* 500. Plo. 193.

A Iustice of peace may deliver, or send into the Kings Bench, an indictment found before him; or a Recognisance of the peace taken by him; or a force recorded by him, without any *Certiorari*: but if a Iust. of peace having a record in his hands, be discharged of his office, now he cannot certifie it without a *Certiorari*, although he be made a Iustice of peace againe See 8. *H.4.f.5. Br. Record* 64. Cromp. 131. a. & 133. b.

If a *Certiorari* be to send up the Indictment of A. in which Indictment some others be indicted together with the same A. yet need not the Iustice of peace to make certificate concerning any but A. For although they bee named joyntly, yet be they indicted severally, and the King may pardon A. without forgiving the other. 6. *Ed.* 4. 5. 6. Ed. 4. 5.

If a *Certiorari* shall come to the Iustices of peace to remove an indictment, and the party sueth not to have it removed, but suffereth it to lye still after the day of the returne of the *Certiorari*, yet it seemeth the Iustices of peace ought (*ex officio*) to send it away, because the writ containeth in it selfe a commandement to them so to doo, and so is a *Supersedeas* of it selfe to the Iustices of peace, to stay their other proceedings. See *entred tit. Forcible Entry.* 6. H. 7. 16. Br. Indg. 17.

And yet by others, the Iustices may proceed upon the Indictment. *Vide Cromp.* 132. 133. & 166. *Dyer* 243.

And albeit the *Certiorari* bee a *Supersedeas* of it selfe, yet may the party Lamb. 497.

partie upon the *Certiorari* purchaſed, have a *Superſedeas* alſo, directed to the Sheriffe, commanding him that he arreſt him not, upon that Record before the Iuſtices of Peace, *Fitz. fol.* 237. In which place alſo he doubteth whether the Iuſtices of Peace themſelves ought not of duty to award their owne *Superſedeas*, to the ſame effect, after that the Writ of *Certiorari* is brought to their hands.

Fitz.N.B. 237.c.

If a *Certiorari* come to the Iuſtices of Peace to remove an inditement, and in truth the inditement was not taken till after the date of that *Certiorari*, yet if the inditement be removed thereby, it is good enough, for that they both be the Kings Courts, (1. *Rich.* 3. 4.) and in ſuch a caſe it is now uſuall to remove it. *Vide Fitz. 71. d.*

Lamb 498.

But all Writs of *Certiorari*, being to remove any inditement of forcible Entrie, or Riot, or of aſſault and batterie, to be found before the Iuſtices of Peace ſhall now be delivered at ſome Quarter Seſſions of the Peace, in open Court, &c. ſtat. 21. *Iacobi cap.* 8. See *hic antea, tit. Forcible Entrie, cap.* 84.

Lamb 571.

All the higher Courts at Weſtm. may write to the Iuſtices of Peace to certifie their Records, that doe make for the triall of cauſes depending in them, as you may reade 19. *H.* 6. 19. where they of the Common place did ſend to the Iuſtices of Peace for an inditement, becauſe in a Writ of Conſpiracie (brought or depending before them) it was materiall to have it.

In ſome caſes the Iuſtice of Peace may certifie a Record (by him made, or found before him out of Seſſions) without any Writ of *Certiorari* therefore to him directed. *Vide antea, tit. Forcible Entrie.*

In other caſes he muſt of dutie certifie his proceedings, but may ſpare to certifie the Record, untill a *Certiorari* come to him for it. See hereof *antea, tit. Suretie for the Peace.*

For the manner of the writ of *Certiorari*, to remove Records from one Court to another, or from the Iuſtices of peace or other officers of record, to any the higher Courts of Weſtm. &c. there are divers formes and ſorts thereof, as you may ſee in *Fitz. Na. Br. fol.* 242. *&c.*

I will only ſet you downe here one forme for all, and ſo conclude.

The forme of a *Certiorari* out of the Chancerie, to certifie a Recogniſance, taken by a Iuſtice of Peace in the countrie, for the keeping of the peace, &c.

F.N.B. 81.c. Cromp. 143.

CAROLUS *Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor', &c. Cuſtod' pacis noſtr', in Comitatu Cant' & eorum cuilibet ſalutem: Volentes certis de cauſis* Certiorari, *ſuper tenorem cujuſdam ſecuritatis Pacis, (vel boni geſtus) quam A. P. Armiger, nuper invenit coram vobis, vel aliquo veſtrum, de eo quod ipſe dampnum vel malum aliquod R. S. aut alicui alii de populo noſtro de corpore ſuo, nec faceret nec fieri procuraret quoviſmodo: vobis mandamus, quod tenorem ſecuritatis pacis (ſive boni geſtus) prædict', nobis in Cancellar' noſtr' in Octabis* Purificat' beatæ Mariæ, *prox' futur', ubicunque tunc fuerit, ſub ſigill' veſtr', vel unus veſtrum diſtincte & aperte ſine dilatione mittatis, Et hoc ſub pœna centum libr' nullatenus*

tenus omittatis, nec aliquis vestrum omittat. Teste meipso apud Westmonast. die Novembris, anno regni nostri sexto.

The returne hereof, See *autea, tit. Surety for the peace, cap. 73.*

Nota quod Record me ſerra remove, mez per Certiorare, ou Corpus cum cauſa, Fitz. Record 3.

Note alſo that upon a *Certiorari* to remoove an Indictment of a Riot, or forcible Entrie, &c. the Returne muſt have theſe words, *Necnon ad diverſas Felonias, &c.* For if the Returne mentions onely that they are Iuſtices of the Peace, without the former words *Necnon ad diverſas felonias, tranſgreſſ. & alia malefacta, &c.* according to the Commiſſion, the Returne is inſufficient, 12. *H. 7. 25. 2. R. 3. 9. Br. Indictment*, 32. 50.

Alſo note that no *Certiorari* ſhall be granted to remoove any Recogniſance, except the ſame Writ be ſigned with the proper hand of the chiefe Iuſtice, or (in his abſence) of one of the Iuſtices of that Court, out of which the ſame Writ ſhall be awarded or made: ſtatute 1. *&* 2. *Ph. & M. cap.* 14.

Deus

Minimis Magnus.

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Soli Deo Gloria.

Deus
Minimis Magnus.

